

11-10-2010

Noak v. Idaho Dept of Correction Clerk's Record v. 4 Dckt. 37788

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Noak v. Idaho Dept of Correction Clerk's Record v. 4 Dckt. 37788" (2010). *Idaho Supreme Court Records & Briefs*. 2747.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2747

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

JOHN F. NOAK, M.D.,
PLAINTIFF-APPELLANT,

vs.

PRISON HEALTH SERVICES, INC., a subsidiary of
AMERICAN SERVICES GROUP, INC.,

DEFENDANT,

and

IDAHO DEPARTMENT OF CORRECTION;
RICHARD D. HAAS; and DOES 1-10,

DEFENDANTS-RESPONDENTS.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Honorable RICHARD D. GREENWOOD, District Judge

JOHN A. BUSH

Attorney for Appellant

EMILY A. MAC MASTER
Deputy Attorney General

Attorney for Respondent

VOLUME IV

37703

TABLE OF CONTENTS.....PAGE NO.

VOLUME I

REGISTER OF ACTIONS	3
COMPLAINT AND DEMAND FOR JURY TRIAL, FILED DECEMBER 15, 2006	11
DEFENDANT PRISON HEALTH SERVICE'S ANSWER TO PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL, FILED JANUARY 8, 2007	23
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS'S MOTION TO DISMISS, FILED JANUARY 9, 2007	37
AFFIDAVIT OF MIREN E. ARTIACH, FILED JANUARY 9, 2007	40
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, FILED JANUARY 9, 2007	47
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS IDAHO DEPARTMENT OF CORRECTIONS' AND RICHARD HAAS' MOTION TO DISMISS, FILED FEBRUARY 21, 2007	65
AFFIDAVIT OF JOHN A. BUSH, FILED FEBRUARY 21, 2007	84
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS, FILED MARCH 5, 2007	109
MEMORANDUM DECISION AND ORDER, FILED APRIL 11, 2007	120
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED APRIL 25, 2007	132
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED APRIL 25, 2007	135

TABLE OF CONTENTS.....	PAGE NO.
PLAINTIFF’S RESPONSE TO DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS’ MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED MAY 29, 2007	143
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS’ REPLY BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED JUNE 1, 2007	152
ORDER OF CONFIDENTIALITY, FILED AUGUST 10, 2007	161
ORDER, FILED APRIL 10, 2008	165A
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS’ ANSWER TO PLAINTIFF’S COMPLAINT AND DEMAND FOR JURY TRIAL, FILED APRIL 21, 2008.....	166
ORDER MODIFYING ORDER OF CONFIDENTIALITY, FILED SEPTEMBER 9, 2008	182
DEFENDANT PRISON HEALTH SERVICES, INC.’S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....	191
AFFIDAVIT OF BRUCE J. CASTLETON IN SUPPORT OF DEFENDANT PRISON HEALTH SERVICES, INC.’S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	194

VOLUME II

AFFIDAVIT OF BRUCE J. CASTLETON IN SUPPORT OF DEFENDANT PRISON HEALTH SERVICES, INC.’S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009 (CONTINUED)	201
MEMORANDUM IN SUPPORT OF DEFENDANT PRISON HEALTH SERVICES, INC.’S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	335
DEFENDANT RICHARD D. HAAS’ MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	361
AFFIDAVIT OF THOMAS J. BEAUCLAIR IN SUPPORT OF DEFENDANT RICHARD D. HAAS’ MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	364

TABLE OF CONTENTS.....PAGE NO.

AFFIDAVIT OF RICHARD D. HAAS IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT, FILED SEPTEMBER 3, 2009.....368

AFFIDAVIT OF WILLIAM FRUEHLING IN SUPPORT OF DEFENDANT RICHARD D.
HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....371

VOLUME III

AFFIDAVIT OF WILLIAM FRUEHLING IN SUPPORT OF DEFENDANT RICHARD D.
HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009
(CONTINUED)401

AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF DEFENDANT RICHARD D.
HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....411

VOLUME IV

AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF DEFENDANT RICHARD D.
HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009
(CONTINUED)601

DEFENDANT RICHARD D. HAAS' MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....776

VOLUME V

DEFENDANT RICHARD D. HAAS' MEMORANDUM IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009 (CONTINUED).....801

DEFENDANTS' JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS, FILED
SEPTEMBER 3, 2009807

DEFENDANT IDAHO DEPARTMENT OF CORRECTION'S MOTION FOR SUMMARY
JUDGMENT, FILED OCTOBER 15, 2009826

AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF DEFENDANT IDAHO
DEPARTMENT OF CORRECTION'S MOTION FOR SUMMARY JUDGMENT,
FILED OCTOBER 15, 2009.....830

TABLE OF CONTENTS.....PAGE NO.

DEFENDANT IDAHO DEPARTMENT OF CORRECTION'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 15, 2009	911
PLAINTIFF'S STATEMENT OF FACTS, FILED OCTOBER 30, 2009.....	940
PLAINTIFF'S MOTION TO STRIKE, FILED OCTOBER 30, 2009.....	974
AFFIDAVIT OF JOHN A. BUSH, FILED OCTOBER 30, 2009	977

VOLUME VI

AFFIDAVIT OF JOHN A. BUSH, FILED OCTOBER 30, 2009 (CONTINUED)	1001
--	------

VOLUME VII

AFFIDAVIT OF JOHN A. BUSH, FILED OCTOBER 30, 2009 (CONTINUED)	1201
PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE, FILED OCTOBER 30, 2009	1222
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT PRISON HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 30, 2009	1229
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT RICHARD D. HAAS' MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 30, 2009.....	1251
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT IDAHO DEPARTMENT OF CORRECTIONS' MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 30, 2009.....	1275
AFFIDAVIT OF JOHN F. NOAK, M.D., FILED OCTOBER 30, 2009	1293
DEFENDANT PRISON HEALTH SERVICES, INC.'S MEMORANDUM IN REPLY TO THE PLAINTIFF'S MEMORANDUM IN OPPOSITION TO PHS'S MOTION FOR SUMMARY JUDGMENT, FILED NOVEMBER 5, 2009	1299
SECOND AFFIDAVIT OF BRUCE J. CASTLETON IN SUPPORT OF DEFENDANT PRISON HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT, FILED NOVEMBER 5, 2009.....	1315

TABLE OF CONTENTS.....PAGE NO.

STATE DEFENDANTS’ JOINT OPPOSITION TO PLAINTIFF’S MOTION TO STRIKE,
FILED NOVEMBER 6, 2009.....1325

AFFIDAVIT OF JASON URQUHART IN SUPPORT OF DEFENDANT IDAHO
DEPARTMENT OF CORRECTION’S MOTION FOR SUMMARY JUDGMENT,
FILED NOVEMBER 6, 2009.....1330

AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF THE STATE DEFENDANTS’
REPLY BRIEFS, FILED NOVEMBER 6, 2009.....1340

DEFENDANT IDAHO DEPARTMENT OF CORRECTION’S REPLY BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT, FILED NOVEMBER 6, 2009.....1345

DEFENDANT RICHARD D. HAAS’ REPLY BRIEF IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, FILED NOVEMBER 6, 20091383

SUPPLEMENTAL AFFIDAVIT OF JOHN A. BUSH, FILED NOVEMBER 12, 2009.....1396

VOLUME VIII

MEMORANDUM DECISION AND ORDER, FILED DECEMBER 28, 20091401

STIPULATION FOR DISMISSAL OF DEFENDANT PRISON HEALTH SERVICES, INC.,
FILED APRIL 28, 2010..... 1421A

ORDER OF DISMISSAL OF DEFENDANT PRISON HEALTH SERVICES, INC. WITH
PREJUDICE, FILED MAY 5, 2010.....1422

DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS’
MOTION FOR ATTORNEYS FEES, FILED MAY 7, 2010..... 1423A

DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS’
MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED
MAY 7, 2010 1423D

AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF STATE DEFENDANTS’
MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED
MAY 7, 2010 1423S

AFFIDAVIT OF JAMES D. CARLSON IN SUPPORT OF DEFENDANTS IDAHO
DEPARTMENT OF CORRECTION AND RICHARD D. HAAS’ MEMORANDUM OF
COSTS AND ATTORNEY FEES, FILED MAY 7, 20101423XX

TABLE OF CONTENTS.....	PAGE NO.
PLAINTIFF’S OBJECTION TO DEFENDANTS IDAHO DEPARTMENT OF CORRECTIONS AND RICHARD D. HAAS’ MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED MAY 24, 2010	1423AAA
JUDGMENT, FILED JUNE 7, 2010.....	1424
NOTICE OF APPEAL, FILED JUNE 14, 2010.....	1426
AMENDED NOTICE OF APPEAL, FILED JUNE 18, 2010.....	1432
REQUEST FOR ADDITIONAL TRANSCRIPT AND CLERK’S RECORD, FILED JUNE 28, 2010.....	1438
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS’ REPLY BRIEF IN SUPPORT OF MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED JULY 15, 2010	1443A
SUPPLEMENTAL AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED JULY 15, 2010.....	1443H
AFFIDAVIT OF KRISTINE COFFMAN IN SUPPORT OF MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED JULY 15, 2010	1443S
NOTICE OF TRANSCRIPT LODGED, FILED AUGUST 17, 2010	1444
CERTIFICATE OF EXHIBITS.....	1445
CERTIFICATE OF SERVICE	1446
CERTIFICATE OF RECORD.....	1447
ORDER ON COSTS AND ATTORNEYS’ FEES, FILED AUGUST 19, 2010	1448
PLAINTIFF’S OBJECTION TO CLERK’S RECORD AND REQUEST FOR ADDITIONAL DOCUMENTS, FILED AUGUST 31, 2010	1451
DEFENDANTS’ OBJECTION TO CLERK’S RECORD, REQUESTING ADDITIONAL DOCUMENTS, FILED SEPTEMBER 1, 2010	1455
AMENDED JUDGMENT, FILED SEPTEMBER 16, 2010.....	1458

TABLE OF CONTENTS.....PAGE NO.

ORDER GRANTING REQUEST FOR ADDITIONAL RECORDS TO BE INCLUDED IN
THE CLERK’S RECORD AND / OR TRANSCRIPT ON APPEAL, FILED
OCTOBER 1, 2010.....1462

NOTICE OF TRANSCRIPT LODGED, FILED NOVEMBER 8, 20101466

INDEX TO THE CLERK'S RECORD.....PAGE NO.

AFFIDAVIT OF BRUCE J. CASTLETON IN SUPPORT OF DEFENDANT PRISON HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	194
AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF DEFENDANT IDAHO DEPARTMENT OF CORRECTION'S MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 15, 2009.....	830
AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF DEFENDANT RICHARD D. HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....	411
AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF STATE DEFENDANTS' MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED MAY 7, 2010	1423S
AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF THE STATE DEFENDANTS' REPLY BRIEFS, FILED NOVEMBER 6, 2009.....	1340
AFFIDAVIT OF JAMES D. CARLSON IN SUPPORT OF DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED MAY 7, 2010.....	1423XX
AFFIDAVIT OF JASON URQUHART IN SUPPORT OF DEFENDANT IDAHO DEPARTMENT OF CORRECTION'S MOTION FOR SUMMARY JUDGMENT, FILED NOVEMBER 6, 2009.....	1330
AFFIDAVIT OF JOHN A. BUSH, FILED FEBRUARY 21, 2007	84
AFFIDAVIT OF JOHN A. BUSH, FILED OCTOBER 30, 2009	977
AFFIDAVIT OF JOHN F. NOAK, M.D., FILED OCTOBER 30, 2009.....	1293
AFFIDAVIT OF KRISTINE COFFMAN IN SUPPORT OF MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED JULY 15, 2010.....	1443S
AFFIDAVIT OF MIREN E. ARTIACH, FILED JANUARY 9, 2007	40
AFFIDAVIT OF RICHARD D. HAAS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....	368
AFFIDAVIT OF THOMAS J. BEAUCLAIR IN SUPPORT OF DEFENDANT RICHARD D. HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....	364

INDEX TO THE CLERK'S RECORD.....PAGE NO.

AFFIDAVIT OF WILLIAM FRUEHLING IN SUPPORT OF DEFENDANT RICHARD D. HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....	371
AMENDED JUDGMENT, FILED SEPTEMBER 16, 2010.....	1458
AMENDED NOTICE OF APPEAL, FILED JUNE 18, 2010.....	1432
CERTIFICATE OF EXHIBITS.....	1445
CERTIFICATE OF RECORD.....	1447
CERTIFICATE OF SERVICE	1446
COMPLAINT AND DEMAND FOR JURY TRIAL, FILED DECEMBER 15, 2006	11
DEFENDANT IDAHO DEPARTMENT OF CORRECTION'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 15, 2009	911
DEFENDANT IDAHO DEPARTMENT OF CORRECTION'S MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 15, 2009	826
DEFENDANT IDAHO DEPARTMENT OF CORRECTION'S REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, FILED NOVEMBER 6, 2009.....	1345
DEFENDANT PRISON HEALTH SERVICE'S ANSWER TO PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL, FILED JANUARY 8, 2007.....	23
DEFENDANT PRISON HEALTH SERVICES, INC.'S MEMORANDUM IN REPLY TO THE PLAINTIFF'S MEMORANDUM IN OPPOSITION TO PHS'S MOTION FOR SUMMARY JUDGMENT, FILED NOVEMBER 5, 2009	1299
DEFENDANT PRISON HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009.....	191
DEFENDANT RICHARD D. HAAS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	776
DEFENDANT RICHARD D. HAAS' MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	361
DEFENDANT RICHARD D. HAAS' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, FILED NOVEMBER 6, 2009	1383

INDEX TO THE CLERK'S RECORD.....PAGE NO.

DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' ANSWER TO PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL, FILED APRIL 21, 2008.....	166
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED APRIL 25, 2007.....	135
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED MAY 7, 2010	1423D
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED APRIL 25, 2007	132
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' MOTION FOR ATTORNEYS FEES, FILED MAY 7, 2010	1423A
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS, FILED MARCH 5, 2007.....	109
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' REPLY BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION, OR IN THE ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED JUNE 1, 2007	152
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS' REPLY BRIEF IN SUPPORT OF MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED JULY 15, 2010	1443A
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS'S MOTION TO DISMISS, FILED JANUARY 9, 2007	37
DEFENDANTS IDAHO DEPARTMENT OF CORRECTION AND RICHARD D. HAAS'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, FILED JANUARY 9, 2007.....	47
DEFENDANTS' JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS, FILED SEPTEMBER 3, 2009	807

INDEX TO THE CLERK'S RECORD.....	PAGE NO.
DEFENDANTS' OBJECTION TO CLERK'S RECORD, REQUESTING ADDITIONAL DOCUMENTS, FILED SEPTEMBER 1, 2010	1455
JUDGMENT, FILED JUNE 7, 2010.....	1424
MEMORANDUM DECISION AND ORDER, FILED APRIL 11, 2007.....	120
MEMORANDUM DECISION AND ORDER, FILED DECEMBER 28, 2009	1401
MEMORANDUM IN SUPPORT OF DEFENDANT PRISON HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT, FILED SEPTEMBER 3, 2009	335
NOTICE OF APPEAL, FILED JUNE 14, 2010.....	1426
NOTICE OF TRANSCRIPT LODGED, FILED AUGUST 17, 2010	1444
NOTICE OF TRANSCRIPT LODGED, FILED NOVEMBER 8, 2010	1466
ORDER GRANTING REQUEST FOR ADDITIONAL RECORDS TO BE INCLUDED IN THE CLERK'S RECORD AND / OR TRANSCRIPT ON APPEAL, FILED OCTOBER 1, 2010	1462
ORDER MODIFYING ORDER OF CONFIDENTIALITY, FILED SEPTEMBER 9, 2008	182
ORDER OF CONFIDENTIALITY, FILED AUGUST 10, 2007	161
ORDER OF DISMISSAL OF DEFENDANT PRISON HEALTH SERVICES, INC. WITH PREJUDICE, FILED MAY 5, 2010.....	1422
ORDER ON COSTS AND ATTORNEYS' FEES, FILED AUGUST 19, 2010	1448
ORDER, FILED APRIL 10, 2008	165A
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT IDAHO DEPARTMENT OF CORRECTIONS' MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 30, 2009.....	1275
PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT PRISON HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 30, 2009	1229

INDEX TO THE CLERK'S RECORD.....PAGE NO.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT RICHARD D. HAAS'
MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 30, 2009.....1251

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS IDAHO
DEPARTMENT OF CORRECTIONS' AND RICHARD HAAS' MOTION TO
DISMISS, FILED FEBRUARY 21, 200765

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE, FILED
OCTOBER 30, 2009.....1222

PLAINTIFF'S MOTION TO STRIKE, FILED OCTOBER 30, 2009.....974

PLAINTIFF'S OBJECTION TO CLERK'S RECORD AND REQUEST FOR ADDITIONAL
DOCUMENTS, FILED AUGUST 31, 20101451

PLAINTIFF'S OBJECTION TO DEFENDANTS IDAHO DEPARTMENT OF
CORRECTIONS AND RICHARD D. HAAS' MEMORANDUM OF COSTS AND
ATTORNEY FEES, FILED MAY 24, 2010..... 1423AAA

PLAINTIFF'S RESPONSE TO DEFENDANTS IDAHO DEPARTMENT OF CORRECTION
AND RICHARD D. HAAS' MOTION FOR RECONSIDERATION, OR IN THE
ALTERNATIVE CLARIFICATION, OF ORDER ON MOTION TO DISMISS, FILED
MAY 29, 2007143

PLAINTIFF'S STATEMENT OF FACTS, FILED OCTOBER 30, 2009.....940

REGISTER OF ACTIONS3

REQUEST FOR ADDITIONAL TRANSCRIPT AND CLERK'S RECORD, FILED
JUNE 28, 2010.....1438

SECOND AFFIDAVIT OF BRUCE J. CASTLETON IN SUPPORT OF DEFENDANT
PRISON HEALTH SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT,
FILED NOVEMBER 5, 2009.....1315

STATE DEFENDANTS' JOINT OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE,
FILED NOVEMBER 6, 2009.....1325

STIPULATION FOR DISMISSAL OF DEFENDANT PRISON HEALTH SERVICES, INC.,
FILED APRIL 28, 2010.....1421A

INDEX TO THE CLERK'S RECORD.....PAGE NO.

SUPPLEMENTAL AFFIDAVIT OF EMILY A. MAC MASTER IN SUPPORT OF
MEMORANDUM OF COSTS AND ATTORNEY FEES, FILED
JULY 15, 2010.....1443H

SUPPLEMENTAL AFFIDAVIT OF JOHN A. BUSH, FILED NOVEMBER 12, 2009.....1396

Re:

Noak v. Prison Health Care Services, Inc.

TRANSCRIPTION OF AUDIOTAPED
INTERVIEW OF JANNA BETH NICHOLSON

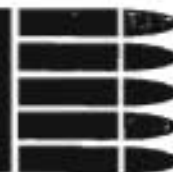
FEBRUARY 12, 2004

Reported By:

JEFF LaMAR, C.S.R. No. 640

COPY

**ASSOCIATED
REPORTING, INC.**



1618 W. Jefferson ▼ Boise Idaho ▼ 83702
(800) 588-3370 ▼ (208) 343-4004 ▼ (208) 343-4002 Fax

000602

Re:
Noak v. Prison Health Care Services, Inc.

TRANSCRIPTION OF AUDIOTAPED
INTERVIEW OF JANNA BETH NICHOLSON
FEBRUARY 12, 2004

JEFF LaMAR, C.S.R. No. 640

Page 1

MR. LAKASKEY: For the record, today is
February 12th, and it's 9:33.

EXAMINATION

BY MR. LAKASKEY:

Q. Janna, let's make sure I got your
correct address here. In fact, I don't think I --
I got your phone number.

Can I -- Janna Nicholson; right?

A. Uh-huh.

Q. And what's your middle name, Janna?

A. Beth.

Q. And what's your home address?

A. 3375 North Jones, J-o-n-e-s, Place,
Boise, 83704.

Q. You work in Payette and you live in
Boise? Oh, boy. That's a commute.

A. Just two days a week, 24 hour shifts.

Q. Oh. The day that's in question here
is January 30th. And like I said, we talked to
Norma and she said she was having problems, I
guess the beginning of the week, January 30th
being a Friday. She told us that she went to the
hospital, came back, saw Dr. Noak later that, I
guess, evening.

Page 2

A. Uh-huh.

Q. I guess can you start from -- tell me
what happened in the beginning of the week when
Norma first started having these problems.

A. Well, I became involved on the 29th.

Q. Okay.

A. I had not worked previously, and
spoken to her earlier in the week. But what had
occurred is during the middle of the day she
approached me and said she hadn't been feeling
well. And she gave some symptoms.

And so at that point instead of doing
an urgent care on her at that moment, the P.A. was
in the facility. I went ahead and had her do a
UA --

Q. And that's --

A. -- which is a urinalysis.

Q. And that's Karen?

A. Uh-huh.

Q. Okay. Okay.

A. And basically I do that sometimes, you
know, to kind of head off something so that I
don't have to call someone in later or whatever.

Q. Uh-huh.

A. At that point she did have some

Page 3

changes. She had some significant findings in her
UA. She did see Karen, well, as soon as we could
fit her in --

Q. Okay.

A. -- on that day, which was later in the
afternoon.

At that point in time we discovered
that she had -- well, she was hypotensive. So
Karen treated her. She had me -- Karen had me
stay. My shift ended at 3:30. She had me stay
and initiate some IV therapy on her.

Q. Okay.

A. She had -- she was in acute abdomen,
is what we would call it. Kind of some
generalized abdominal complaints that were
continuing to get worse. She gave a history of it
beginning, you know, towards the -- she just felt
poorly most of the week.

So we went ahead and did that. I
stayed and (unintelligible) that evening. Went
home, came back the next morning, and she was
worse.

Q. Okay. How so?

A. There's no nursing staff through the
night at that facility.

Page 4

1 (Pages 1 to 4)

1 Q. All right.
2 A. When the person goes home at 11:00,
3 11:30, there's nobody there. They have to call up
4 to SICI, you know, for medical care.
5 MR. WOLFE: Do you know what SICI is?
6 MR. LAKASKEY: South --
7 THE WITNESS: It's the men's minimum --
8 MR. WOLFE: South Idaho Correctional
9 Institute.
10 Q. (BY MR. LAKASKEY): Okay.
11 A. -- facility where there is 24-hour
12 medical staff.
13 So when I came in the next morning, I
14 checked on her. And she was -- the officers told
15 me that she was worse, that basically she wasn't
16 out of bed. And when I went down to see her, she
17 looked terrible. Her color was ashen. There were
18 periods of time where she was almost writhing in
19 pain.
20 Q. Okay.
21 A. At that point --
22 Q. What time was this on the 30th, about?
23 A. This was probably 7:00.
24 Q. 7:00 in the morning?
25 A. A.m., yeah.

Page 5

1 Q. Okay.
2 A. Because we were supposed to be
3 doing -- before I left the night before, too, the
4 officers were sort of -- I always get the
5 patient's permission to talk to officers about
6 their medical condition, or at least enough --
7 kind of give them enough information, you know, so
8 that if something were to happen they would know
9 that it's significant and be able to alert
10 somebody.
11 Q. Okay.
12 A. So the officers had concerns. From,
13 you know, the minute I walked in the door at 7:00,
14 they said, "You know, she's not doing well."
15 I'm like, "Okay."
16 And so at 7:00 I went down and
17 assessed her. Made a call, started IV fluids on
18 her again.
19 Q. Who did you make the call to?
20 A. Karen Barrett.
21 Q. Okay. And Karen said -- do you have
22 to get permission from Karen to --
23 A. Pretty much, yeah. Yeah.
24 Q. Okay.
25 A. And I was just concerned because we'd

Page 6

1 had a previous incident. You know, you just -- in
2 that setting it's really difficult. We don't have
3 all the diagnostic things that we would need or
4 whatever, so I try to keep everybody involved.
5 And since Karen -- she was actually
6 off that day, but since Karen was involved in her
7 care the day prior, I went ahead and called her
8 for the continuum. She then called Dr. Noak, who
9 was at SICI.
10 Q. Okay.
11 A. And I had called up to SICI because I
12 did not have the equipment I needed to do what I
13 needed to do with her, which was to strain urine
14 to look for -- I guess some of the differential
15 diagnoses were kidney stones. She was presenting
16 very similar to a kidney stone, which is
17 excruciating pain.
18 Karen went ahead and ordered pain meds
19 for her. I mean I called up to SICI, spoke to
20 Andy, who's the HSA, health services
21 administrator.
22 Q. Okay.
23 A. And Dr. Noak was I guess in the
24 immediate area at that time. And I had asked for
25 more fluids and then the straining equipment. And

Page 7

1 at that point I was told Dr. Noak was going to
2 come down and assess her, because I felt she
3 needed to be assessed and we needed to make a
4 decision on what we're going to do with her.
5 Q. And this was on the 30th?
6 A. Uh-huh.
7 Q. Okay.
8 A. Her urinary output was down, which is
9 concerning, given the fact that basically when you
10 put fluids into people, you expect to see about
11 the same amount come out --
12 Q. Uh-huh.
13 A. -- which wasn't happening. So you get
14 concerned about kidneys not functioning, things
15 like that.
16 This was at noon.
17 Q. That you talked to Andy?
18 A. Uh-huh. And he brought down the stuff
19 I had requested. And at that point again he
20 reiterated that Dr. Noak's going to be on the
21 compound, he will come down and assess her before
22 he leaves this afternoon.
23 Q. Okay.
24 A. So --
25 Q. So he said he was on the compound?

Page 8

1 A. He was right there at SICI, yeah, at
2 SICI.
3 Q. Okay.
4 A. He had spoken to Karen. Andy told me
5 that he had spoken to Karen and he knew, you know,
6 the situation and what was going on.
7 Q. Okay.
8 A. So instead of, you know, Karen or
9 another P.A. coming down, he was going to come
10 down and assess her.
11 So I proceeded to take care of her
12 throughout the day, which the other concerning
13 factor to me was that her blood pressure was going
14 from -- the night before it was up around 160 over
15 104 or 106. She has no history.
16 Q. Okay.
17 A. Okay? It would go up and then it
18 would drop down into the 80s.
19 Q. Okay.
20 A. All throughout that day I had her in
21 her room with the officer -- you know, I talked
22 with the officers. It's very difficult with one
23 person on staff to manage somebody who's that
24 acute and then take care of the rest of your
25 business. You know, it's a very busy day over

Page 9

1 there.
2 Q. You were the only one there that day?
3 A. Uh-huh.
4 Q. Okay.
5 A. So she was in her room with IV fluids
6 running. And I checked on her probably every half
7 hour. Her roommate was aware and was sort of
8 running interference. If she needed something,
9 she'd come and tell me, you know -- which it's a
10 safe situation to run fluids at a low rate like I
11 was.
12 But as the day went on, you know, she
13 just kept getting worse. She then was a little
14 bit upset about -- the pain meds were working, but
15 she had concerns about her addiction and taking
16 narcotics.
17 Q. What type of medication was she
18 taking?
19 A. Darvocet.
20 Q. Okay.
21 A. And ibuprofen. And she started to cry
22 at one point. We were helping her to the
23 bathroom, you know, each time she wasn't because I
24 had to catch her urine and look at her output and
25 then strain it. All day long she kept urinating

Page 10

1 blood.
2 Q. Okay.
3 A. Okay?
4 Q. Which would be a sign of kidney
5 infection or --
6 A. I was thinking more kidney stone --
7 Q. Okay.
8 A. -- because it was bright red. And
9 typically that presents like that.
10 The thing that was concerning to me
11 was that her pain, it was one of those things
12 where it could be, you know, a ton of different
13 things, you just really never know until you have,
14 you know, diagnostic tests done.
15 We did draw blood, sent that to
16 Saint Al's. No, actually what we did is was we
17 sent it to Lab Corp because it had been drawn
18 first thing that morning.
19 So I called Lab Corp, asked them to
20 expedite and to do a manual differential on her
21 CBC, which is going to tell us if the white
22 count's elevated, you know, does she have a
23 disease process, infection, something like that
24 going.
25 Q. Okay.

Page 11

1 A. Got that back midafternoon with -- it
2 really didn't have a lot of abnormalities, except
3 it had some atypical cells and some burr cells,
4 which is indicative in some cases of a disease
5 process that's a little bit more significant than
6 a kidney stone.
7 Q. Okay.
8 A. So I alerted -- I can't remember
9 exactly. I'd have to look at my notes in the
10 chart whether I alerted anybody at that point.
11 And actually that didn't come back until late
12 afternoon, because Lab Corp did not even pick up
13 the blood until probably after 2:00. I had to
14 actually call Seattle to get that manual
15 differential on her.
16 Q. Where is the blood sent to?
17 A. Lab Corp.
18 Q. In town here or --
19 A. Uh-huh. And then they send it out.
20 Q. Okay.
21 A. So earlier that morning, had we sent
22 it stat to Saint Al's -- sometimes we'll do that,
23 send it to Saint Al's, but somebody has to take it
24 by private vehicle over to Saint Al's.
25 Q. Okay.

Page 12

3 (Pages 9 to 12)

1 A. And that wasn't done that morning,
2 because it was drawn very early.
3 Sort of as the day progressed, she got
4 worse and, you know, we were more concerned about
5 her condition.
6 Q. Now, was doctor -- was the doctor
7 being notified of everything that was happening
8 with --
9 A. Not at that point. He knew up to the
10 point that we had drawn the blood, you know,
11 everything else. And basically, he was -- I guess
12 the way -- when you deal with Dr. Noak, if you
13 don't have anything significant to tell him,
14 there's no reason to call him.
15 Q. Okay.
16 A. You know, and he'll tell you that.
17 So --
18 Q. How would he tell you? "Why are you
19 telling me this?" Or what would he say?
20 A. Basically, it's like "So." Or "Yeah."
21 Q. Okay.
22 A. You really get nothing. And that, to
23 me, I'm probably more conditioned, you know, to
24 what I know he's going to find significant. He
25 never did find anything, I told him all day,

Page 13

1 something that he tends to just sort of across the
2 board think with all the folks we have with those
3 kinds of offenses.
4 And I explained -- he said -- I don't
5 remember his exact words, so I'm not going to try
6 to -- but he minimized the situation, is what he
7 did, and said, "Well, call me back in an hour or
8 two."
9 Q. Okay.
10 A. So I had midday alerted security
11 control, the sergeant actually, that there's a
12 potential for this gal to be transported, you
13 know, for evaluation, just so that they can
14 prepare, because --
15 Q. Uh-huh.
16 A. -- you have to have security involved
17 in that. So I gave her a heads-up, just kind of
18 this could happen.
19 Q. Was that Sergeant Finley?
20 A. Yes.
21 Q. Okay.
22 A. That was probably about three o'clock,
23 actually, 2:00 or 3:00 when I really started to
24 feel like she was going to need to be evaluated.
25 So at that point, I believe within 25

Page 15

1 significant.
2 Q. Okay.
3 A. Or that evening.
4 Q. Okay.
5 A. So I did notify -- when he hadn't
6 showed up at like -- I'm thinking it was close to
7 7:00 that night. I'm supposed to be off at 3:30.
8 Q. Wow. Okay.
9 A. I'm trying to be proactive with regard
10 to -- at noon I'm notifying that somebody needs to
11 look at her. We need to decide what we're going
12 to do with her.
13 And I asked -- I called him on his
14 cell phone and said, "I was just wondering what
15 your ETA is to come assess her."
16 And he said, "Well" -- that's exactly
17 how he said it -- "it's not going to be until
18 11:00 or 12:00." He said, "I'm at a meeting."
19 And I said, "Well, she's not doing
20 real good."
21 And he said, "Well, what do you mean?"
22 And I told him basically that she
23 continued to have blood in her urine, she
24 continued to have the pain. I said, "I don't
25 think she's drug seeking," because that's

Page 14

1 minutes of calling Dr. Noak, she went down in the
2 hall, the inmate did. She had been assisted up to
3 go to the bathroom and was going -- one of the
4 officers was with her, Hitamoken (phonetic) was
5 with her, along with the other inmate assisting
6 her, and she hit the floor.
7 Q. Okay.
8 A. She was -- her level of consciousness
9 was very much decreased. She didn't even know
10 what was going on, where she was. When I got to
11 her -- and it took another five minutes probably
12 for her to become a little bit more oriented.
13 So that right there, after I had been
14 putting fluids in her, she should not be
15 hypotensive, enough to hit the ground due to that.
16 Q. Uh-huh.
17 A. My concerns were the fluctuations in
18 blood pressure. You know, at that point the
19 urinary -- the blood in the urine wasn't so much
20 the problem. I was more concerned about the up
21 and down with blood pressure and what was causing
22 that. Certainly pain can cause a response. But
23 I'm not a doctor.
24 Q. Uh-huh.
25 A. Do you know what I mean? That's the

Page 16

1 way I felt. I mean sure I act as one out in the
2 field.
3 Q. Right.
4 A. But it's different in this setting.
5 And so I called him back. And he –
6 Q. About four o'clock now, maybe?
7 A. No. This is seven o'clock at night.
8 Q. Okay.
9 A. Yeah, I finally made the call. And
10 I'd have to look at my notes in her chart to know
11 because I document everything. I documented what
12 he said to me, what times they were, everything.
13 Q. Now, is that different notes or is
14 that her chart?
15 A. Her chart notes.
16 Q. Okay.
17 A. Progress notes.
18 Q. Okay.
19 A. Any communication I have with anybody
20 I document, you know, what was said and just sort
21 of – that's just the sort of standard to do.
22 Q. All right.
23 A. So when I called him back, I was a
24 little more forceful about the situation. I had
25 actually spun her urine down on my own, because

Page 17

1 I've done it before, and I was looking for white
2 casts and things – something significant that I
3 could tell him to make him – impress upon him
4 something needs to be done here.
5 And I – he just pretty much – when I
6 said – and I can't remember how I put it, but I
7 said, "We have limited staff here. She can't have
8 fluids throughout the night. We have no nursing
9 care. You either need to come assess her or we
10 need to take her to the hospital."
11 And he's like, "Oh, fine. Take her to
12 the hospital and get an IVP," which is basically
13 you run dye through to look at the urinary
14 function.
15 And so at that point I called the
16 radiologist at Saint Al's, explained the situation
17 that Dr. Noak had ordered an IVP, and he refused
18 the patient. He said, "She has way too many
19 significant things going on here. I'm not
20 comfortable with her, just sending her here for
21 this test. She needs to go through the ER and be
22 evaluated."
23 Q. Okay. Okay.
24 A. Which happens almost every time. Any
25 physician's not going to accept care without their

Page 18

1 own evaluation. It happens.
2 So I called the hospital. I called
3 directly to the comm center and I just happen to
4 know everybody there. So Dr. Binnion accepted her
5 and said, "Let's do a CT urogram." You know,
6 she – I explained everything that had gone on.
7 And she knows me well enough to know,
8 you know, that my assessment's decent. And so we
9 were trying to help, you know, with regard –
10 obviously we're all aware of the cost of these
11 things, but to me that's insignificant at that
12 point.
13 Q. Uh-huh.
14 A. It's like, we need to take care of
15 this person. So what I did, as opposed to calling
16 an ambulance, because she was stable – I'm
17 capable of taking care of her – I went with her
18 with an officer in the van, kept her IV going and
19 got her in, got a wheelchair, took her in, and I
20 stayed until about 2:30 in the morning when they
21 finally released her. The urogram didn't show
22 anything.
23 And got back to the facility. She had
24 been given some pain medication, which she
25 accepted.

Page 19

1 Q. What was that called?
2 A. She was in a significant –
3 Q. She mentioned that to us yesterday.
4 A. Dilaudid.
5 Q. Okay. Dilaudid.
6 A. Dilaudid is sort of a hydromorphone,
7 so I would have to – it's like a synthetic
8 morphine.
9 Q. Okay.
10 A. I think at this point she was – she
11 was just miserable, you know. And she even
12 expressed to Dr. Binnion her concerns about the
13 narcotics and stuff.
14 Q. She didn't want them?
15 A. Huh-uh, no. But there really isn't
16 anything else at that point you can do for
17 somebody, except for using that type of a
18 medication.
19 Q. Uh-huh.
20 A. She sort of accepted that, but she
21 asked me to please kind of make sure they didn't
22 order it, you know, because she was concerned
23 about getting in trouble for not following orders
24 too.
25 Q. Okay. Okay.

Page 20

1 A. So, you know, she – my gut from the
2 very beginning is she was sick. I had been around
3 her, you know – and it is a balancing act, you
4 know, with these people. You can usually tell the
5 ones that are playing you, not always.

6 Q. Uh-huh.

7 A. But it doesn't matter. If they're
8 sick, you assess them. And if you find out later
9 that they're faking it, then you deal with that
10 then.

11 Q. So now, when you treated her, you felt
12 something was wrong?

13 A. Oh, no doubt about it.

14 Q. She goes to the hospital, and they
15 can't determine what is wrong?

16 A. Not at that point.

17 Q. Okay.

18 A. No.

19 Q. Is there a point later on that they
20 found out what was wrong with her or –

21 A. We still don't know. She's still
22 having weird symptoms. She's still off and on
23 peeing blood.

24 Q. Okay.

25 A. Blood pressure's still not regulated.

Page 21

1 30th.

2 A. Correct.

3 Q. So she went to the hospital the night
4 before?

5 A. Correct.

6 Q. Okay. Okay. So she was brought back
7 to the facility, taken back down to her room.

8 IV still attached or –

9 A. No. No.

10 Q. Okay.

11 A. Discontinued it.

12 Q. Okay.

13 A. She had been given the pain
14 medication, and she was very definitely pretty
15 much knocked out.

16 Q. Okay. And what time did you end up
17 leaving to go home?

18 A. Well, I got home at about ten after
19 3:00 in the morning.

20 Q. Okay.

21 A. And I went back again at 7:00.

22 Q. Okay. So you come in at
23 seven o'clock.

24 One of the first things you did was
25 check on her and see how she's doing?

Page 23

1 Q. I guess when you're urinating blood,
2 there's obviously something wrong, and that's not
3 something somebody can go ahead and fake or
4 anything like that?

5 A. No. No. And there's many times with
6 illness – I mean if you think about it, how many
7 people go forever going to physician after
8 physician after physician to try to find out
9 what's wrong with them, to five years later find
10 out they have something terribly wrong with them.

11 It just wasn't – you weren't able to diagnose or,
12 you know, a test that could find that.

13 Q. Now, when you told her that she was
14 going to go to Saint Al's, what was her reaction
15 to that? Did she want to go? Did she really have
16 no choice?

17 A. She was never given the choice.

18 Q. Okay.

19 A. She just wanted to feel better.

20 Q. Okay. Before we continue on, when we
21 started – this actually happened on the 29th when
22 she went to the hospital that night, right,
23 because I asked you – I know you said you stayed
24 late on – at first you said the 29th, but the
25 incident with the doctor I guess happened on the

Page 22

1 A. Uh-huh.

2 Q. How was that?

3 A. She was about – I would – about the
4 same –

5 Q. Okay.

6 A. – with regard to the pain. The other
7 thing that happened is in the ER when they did a
8 catheterized urine, there was no blood at that
9 point.

10 Q. Okay.

11 A. And then there wasn't any more blood
12 in the urine for a while. And then – see, that's
13 why it's kind of intermittent. There wouldn't be,
14 and then there would be, which is odd.

15 Q. Uh-huh.

16 A. I did not – I was not aware – I did
17 vitals on her all day like I – you know, and
18 watched her all day. She had been ordered another
19 type of a – kind of a muscle relaxer to help with
20 smooth muscle relaxation.

21 Q. What was the name of that?

22 A. Flexeril, cyclobenzaprine, which she
23 was comfortable with because it was not a CNS
24 depressant.

25 Q. Okay.

Page 24

1 A. And it was also helpful with regard to
2 if it was a kidney stone or something to that
3 effect, you know, it will help relax smooth muscle
4 in the ureter, so basically it will help move a
5 stone out a little better if that's the case.

6 She could have passed the stone. I
7 don't know. We didn't see one in the ureters on
8 the urogram. But still to this day, I would have
9 to think that that's probably the greatest
10 possibility.

11 Q. Okay.

12 A. But then Karen said the other day that
13 she still doesn't know what's going on with her.
14 Something is, we just don't know what.

15 Q. And you've never seen her — Norma —
16 for this type of problem before in the past?

17 A. Never seen her for anything medical.

18 Q. Okay. And how long —

19 A. And this was a very different
20 personality. She's not one that walks around
21 boohooing and poor me. You know, she is — I
22 wouldn't say strong personality, but she was
23 there, she did what she needed to do. You know,
24 she — I had talked with her in the past.

25 Q. How long have you worked there?

Page 25

1 A. And she's like, "Yeah, I feel so bad
2 you spent all that time and I" — I don't know.
3 Her personality is — I saw more and more of
4 something that was way deep-seated. Do you know
5 what I mean?

6 Q. Uh-huh.

7 A. Where she's apologizing for everything
8 that's not her fault.

9 Q. Right.

10 A. Like taking up my time and — plus she
11 just — her color still wasn't right that day.

12 And she was orthostatic all day long, which
13 means — orthostatic blood pressure, is what you
14 do is you're measuring the body's ability to
15 compensate for position.

16 And our normal vasculature, like when
17 we're laying down, it's very relaxed, enough to
18 pump against gravity, whatever.

19 Q. Uh-huh.

20 A. So you take a blood pressure and a
21 pulse lying down, then you sit them up with feet
22 on the ground, and you wait a full three minutes
23 for the body to have to compensate, then you do
24 another set of vital signs. And then after that
25 you stand them up and wait another three full

Page 27

1 A. Since — almost a year now.

2 Q. Okay. So you pretty much probably
3 didn't recognize her when she first got there, but
4 after a while every day you would run into her?

5 A. Uh-huh, especially at the female
6 facility, because you're right there with them.
7 You're on the tier.

8 Q. Okay. So now, during the day, during
9 the 30th, she comes back from the hospital, you
10 come back at seven o'clock.

11 How often are you checking her
12 throughout the day?

13 A. Probably at least every hour.

14 Q. And are you —

15 A. Her roommates — because I had clinic,
16 Karen had clinic that day, so I was very busy with
17 her clinic. The roommates were keeping me
18 apprised if she needed me, if something was going
19 on, that type of thing. She got real kind of
20 quiet that day. I think she felt like — she kept
21 apologizing to me because they couldn't really
22 find anything.

23 I said, "This stuff happens. You
24 know, you're sick. If you're sick, you're sick."

25 Q. Uh-huh.

Page 26

1 minutes.

2 Q. Uh-huh.

3 A. And if you get 10 points in blood
4 pressure rise, 15 points in pulse, that means you
5 have significant orthostatic, where you would be
6 positive for orthostatic.

7 So what happens when you take a person
8 from a lying position to a standing position, it
9 takes longer for the body to compensate. So you
10 may get dizzy, lightheaded before your veins can
11 constrict enough to pump enough blood to your
12 head.

13 Q. Okay.

14 A. She was orthostatic all day long.

15 Q. Okay.

16 A. Okay. She had positive orthostatic
17 changes, which still doesn't make any sense
18 because we put a ton of fluid in her. You know,
19 she — where, what's going on, it's hard to say.
20 Is this a vascular problem or is it a volume
21 problem? That was my concern throughout the day.

22 Q. All right. So you'd check on her
23 throughout the day.

24 What time does Dr. Noak eventually
25 come in?

Page 28

7 (Pages 25 to 28)

1 A. I have to think it was about 4:30.
2 Karen and I – before Karen, the P.A., had gone
3 home for the day, we went down together to assess
4 the patient in her room. We didn't bring her up.

5 But Karen wanted to, you know,
6 obviously do an assessment before she went home,
7 and then give us orders for the rest of the week
8 or the week – the next day, I guess, because it
9 was – I believe it was a Friday. Seems like a
10 blur to me.

11 Yeah, it was a Friday, and that's why.
12 So –

13 Q. Is there medical care there during the
14 weekend?

15 A. Uh-huh, same hours, though.

16 Q. Okay.

17 A. Actually, the hours are cut down to –
18 I believe that the weekend person – I work normal
19 shifts when I work the weekend, like if I cover
20 those shifts. But Katie, who's the normal weekend
21 person, works 7:00 a.m. to 9:00 p.m., I believe.

22 Q. Okay. Now, was the doctor called
23 during the day once –

24 Not at all?

25 A. Huh-uh.

Page 29

1 way. And then there's another room, which is
2 Karen's office.

3 Q. Okay.

4 A. So Karen went in her office, and I
5 could see that the procedure room door was open.
6 And I thought – my first thing is I left it open.
7 Oh, my God.

8 So I go to – you know, I'm trying to
9 figure out – because I don't remember leaving it
10 open, and I walked toward the door, and Dr. Noak's
11 sitting in there.

12 And so I went back to Karen's office
13 and I said – or I said to Dr. Noak, I probably
14 said, "Oh, I didn't know you were here," went
15 back, told Karen he was here. And went – he
16 didn't say anything to me at that time. He didn't
17 even acknowledge me.

18 Then I went up to control for
19 something. And Officer Jackson said something –
20 he made a negative comment about Dr. Noak. And
21 apparently he had come in and said something to
22 the effect of "Is there nobody who works in
23 medical around here?"

24 Q. Officer Jackson said that's what the
25 doctor said?

Page 31

1 Q. Were you expecting him to come in that
2 day?

3 A. Huh-uh.

4 Q. Was he scheduled to come in?

5 A. Huh-uh.

6 Q. So when he showed up, it was a
7 surprise?

8 A. Uh-huh.

9 Q. Okay.

10 A. Yeah. When we came back from
11 assessing the patient, Karen's office – I don't
12 know if you saw the setup, there's like room 22,
13 which is Karen's office, then we have a procedure
14 room, then we have our office.

15 Q. We were in Sergeant Finley's office
16 yesterday right across the hall.

17 A. We're right across from the CMS's
18 office.

19 Q. Okay.

20 A. And next past that there's like a
21 hallway that goes outdoors –

22 Q. Uh-huh.

23 A. – across from the drinking fountains,
24 there's another room just beyond that as you go
25 down toward the end of the tier. It would be this

Page 30

1 A. Uh-huh.

2 Q. Okay.

3 A. And apparently, you know, he was upset
4 about that so the officers had let him into the
5 procedure room.

6 Q. Did you – he doesn't have keys to
7 that room?

8 A. Huh-uh. Huh-uh.

9 Q. Do you know who called him in, who –
10 I mean –

11 A. I have no idea.

12 Q. Okay.

13 A. I have no idea.

14 Q. Okay.

15 A. Karen didn't know he was coming
16 either, as far as I know. She didn't alert me to
17 it.

18 Q. So he could have been acting on the
19 call from the night before, or could somebody even
20 higher, maybe Andy or somebody else, had said
21 "Hey, did you check on that patient?"

22 A. I don't know.

23 Q. Okay.

24 A. Usually we communicate. You know,
25 somebody will call me and say "Hey, Noak's coming

Page 32

1 down" or –
2 Q. Okay.
3 A. This was my – I'll tell you what I
4 understand to have occurred. I was pretty angry
5 that he did not come down. I voiced that to my
6 HSA.
7 Q. Who was?
8 A. Andy.
9 Q. Okay.
10 A. I understand that – and I'm trying to
11 remember. I called up to SICI for something that
12 day. And I believe it was Kristi who was his
13 assistant – administrative assistant told me that
14 Andy had called Rick, the head of PHS –
15 Q. Okay.
16 A. – the regional director – Rick Dole,
17 Dall, something.
18 Q. Okay.
19 A. – expressing – because Andy was
20 angry that Dr. Noak didn't show up the day before
21 to assess the patient, when he found out that I
22 had transported her to the hospital.
23 Q. Uh-huh.
24 A. So I kind of just assumed that maybe
25 Rick had told Dr. Noak he better get his rear end

Page 33

1 down there. And maybe that's why he showed up.
2 Q. Okay.
3 A. But there was another patient who on
4 the 21st – we had been dealing with her for quite
5 a while. She was a young gal. Her last name is
6 Salenas, who has a huge goiter, which is
7 thyroid-related.
8 Q. Uh-huh.
9 A. And she's not responding to
10 medication, which is pretty – a very serious
11 condition, actually. She had had finally a
12 thyroid scan done on the 21st, and I was working
13 that day. And Karen brought her chart in to me
14 and said, "Dr. Noak's coming by to review this to
15 try to figure out what they're going to do with
16 her."
17 Well, it's now the 30th and he had her
18 chart. He never did come to review her chart, but
19 he did –
20 Q. Okay.
21 A. I don't know if he saw her that day.
22 Q. Okay.
23 A. I saw her chart and retrieved her
24 chart later that evening after Dr. Noak had left.
25 Q. Okay.

Page 34

1 A. Basically, once Karen I think went
2 in – because I didn't have anything – I had – I
3 was busy doing pill call and stuff like that.
4 Karen went in, and I don't know what happened, how
5 the patient got into the procedure room. I wasn't
6 involved in any of that.
7 The next point that I was involved was
8 when I came out of my office, Karen needed to go
9 back to her office, so I took over in the
10 procedure room where Ms. Hernandez was I guess
11 being assessed by Dr. Noak.
12 Q. Okay. So before that, did he come in
13 with the intention to see her, or did you or Karen
14 give the file to Dr. Noak and say "You need to see
15 her"?
16 A. He had the file.
17 Q. So it appeared that he came in to see
18 her. Now, she was telling us that she came down
19 for – to get her blood pressure checked, and then
20 was sent back to her room, and then came back down
21 to see the doctor.
22 So did you check her blood pressure at
23 the time or did Karen? Do you recall?
24 A. It wasn't – I don't believe it was
25 me.

Page 35

1 Q. Okay. So it must have been Karen?
2 A. We went down to her room –
3 Q. Okay.
4 A. – Karen and I did, just previous to
5 that.
6 Q. How many minutes before, would you
7 say?
8 A. Oh, gosh. I don't know when he
9 arrived. Karen and I were probably in the
10 patient's room 15 minutes –
11 Q. Okay. And then she –
12 A. – assessing her. Karen did a full
13 assess in her room.
14 Q. Okay.
15 A. Checked her belly, I mean did
16 everything. Listened to her lungs, listened to
17 her belly. She did everything in the room.
18 Q. And then the next time she was seen it
19 was by the doctor?
20 A. As far as I know. They could have
21 called her up and sent her back and called her up
22 again. I was pretty busy up on the – you know, a
23 couple doors up.
24 Q. Okay. Okay. So now we're at the
25 point where the doctor's in there with her and you

Page 36

1 come in and take over for Karen.
 2 A. Uh-huh.
 3 Q. What happens then?
 4 A. Well, at that point Dr. Noak was
 5 sitting at the desk, which sits like this against
 6 a wall. So his back would be facing here. The
 7 bed sits here -- okay? -- and then the doorway is
 8 here.
 9 Q. Okay.
 10 A. The inmate was sitting here in a
 11 sitting position --
 12 Q. Uh-huh.
 13 A. -- as Karen exited the room, and I
 14 just kind of stood by the door a second. I
 15 noticed her swaying. And I said, "Are you dizzy?"
 16 And she said, "Yes."
 17 And just as I was going to help her to
 18 lay down, Dr. Noak just said, "Just lay down,"
 19 really very irritated, very abrupt.
 20 Q. Okay.
 21 A. Didn't turn around or anything. So I
 22 assisted her to a laying position, kind of on her
 23 side. She had been complaining of nausea, you
 24 know. And at that point her color was still
 25 really poor.

Page 37

1 cannot remember where I was. I think I was over
 2 by the door again, kind of just standing. I
 3 didn't know whether he was done with his
 4 assessment or whether he was -- needed to assess
 5 her. I really didn't know where they were in that
 6 process.
 7 So the next thing that happened was
 8 Dr. Noak just said, "Go back to your room."
 9 So I didn't say anything. I just
 10 assisted her to a sitting position. And I could
 11 tell by holding on to her that she was becoming
 12 shaky. And I asked her, I said, "Are you okay?"
 13 And she said, "No." She said, "I'm
 14 really dizzy," and she tried to hold on to the
 15 side of the bed.
 16 And I said, "Just relax." She was
 17 really kind of just trembling. And I said, "Just
 18 wait. You know, we don't have to get up right
 19 now. We'll just wait until this passes." So that
 20 took a couple seconds. Actually, probably a
 21 minute or two.
 22 I slowly stood her and I said, "Are
 23 you okay to walk?"
 24 And she said, "Yeah, I think so."
 25 So we start -- all it was was taking

Page 39

1 He didn't ever say anything. He was
 2 just writing in charts. He wasn't verbalizing
 3 anything. And I have to think this went on for
 4 about five minutes. I just made sure she was
 5 comfortable, and then I went around her and put
 6 some stuff away over in the lab area, which is
 7 just right behind the bed. It's a small room.
 8 Q. Okay.
 9 A. Put some stuff in the refrigerator,
 10 made sure that the microscope's put away
 11 correctly, just, you know little stuff. I'm
 12 making a little bit of idle chatter because she's
 13 very uncomfortable. You can see that. She just
 14 is like a mouse laying there.
 15 Q. Can you describe how? I mean --
 16 A. Just very meek. She looked to me like
 17 she was just scared to death --
 18 Q. Okay.
 19 A. -- aside from being sick. She had a
 20 different demeanor about her, and I was just
 21 trying to make her comfortable.
 22 Q. Uh-huh.
 23 A. I didn't read any more into it except
 24 that I could tell that she was uncomfortable, so I
 25 tried to make her more comfortable. At -- I

Page 38

1 her off the end of the bed, turning sideways, and
 2 walking to the door, which was five steps.
 3 We got to the doorway, and she really
 4 starts to tremble. I can feel her skin getting
 5 wet, you know, moist, and I see her color just
 6 drain.
 7 Q. So you're still inside the office at
 8 this point?
 9 A. Uh-huh.
 10 Q. Okay.
 11 A. So what I did was we just kind of
 12 went -- I said, "What we're going to do" -- and I
 13 did this with everybody who has this kind of
 14 complaint. "We're going to back up against the
 15 wall, and we're going to slide down the wall to a
 16 sitting position," that's so that they aren't in
 17 the middle of nowhere -- you know, there's
 18 support.
 19 So I'm assisting her to kind of move
 20 against the wall just outside the door.
 21 Q. Uh-huh.
 22 A. Just as I'm doing that, I remember --
 23 I can't tell you what it was. I heard a
 24 commotion. I heard a bang. And the next thing I
 25 knew I was like shoved aside and Dr. Noak had

Page 40

1 grabbed the inmate under the arm. He just –
2 forcefully.

3 Q. Do you remember which arm?

4 A. It would be her right.

5 Q. Okay.

6 A. He just – he pushed me out of the
7 way, because I took a few steps sideways.

8 Q. How was that? with an open hand? an
9 elbow?

10 A. I can't tell. I don't know. It all
11 happened so fast.

12 Q. But you were pushed, so you had to
13 kind of step out of the way?

14 A. I just found myself over here.

15 Q. Okay.

16 A. I mean I remember him. You know, I
17 can't tell you. It happened so fast. I was so
18 shocked. I wish I could. I don't know whether it
19 was his hand, shoulder.

20 MR. WOLFE: Can you demonstrate the amount
21 of force that was used when he pushed you, on me?

22 THE WITNESS: That might be – it might be
23 kind of hard. I mean it moved me, you know, it –
24 I don't know if I can.

25 MR. WOLFE: Was it a move to protect your

Page 41

1 toward the wall because we were walking – you
2 know, she was on this side of me. She had been on
3 the bed side the whole time, came out the door, I
4 just moved my arms, and I was helping her to turn
5 so that she was flush with the wall.

6 And at that point he came – the next
7 thing I knew I was like three steps over here, off
8 balance – you know, it wasn't like I was just
9 asked to step aside. My arm – my hand released,
10 and he just put himself right inside. And he
11 grabbed her arm, pulled it up over his, and pulled
12 her up like this, and then I was afraid she was
13 going to faint.

14 So I stood – from what the officers
15 told me, they saw me in the hall. I stood there
16 just watching, and she was kind of over on him.
17 And I thought – I was waiting for her to go down.

18 Q. Uh-huh.

19 A. And then I wanted to go after him,
20 too, to be honest. I was so angry. And he
21 quickly went down that hall with her, I mean fast.
22 And I thought for sure she was going to go – you
23 know, just slither right out from under him. But
24 they got to the bedroom.

25 And at that point when they got to her

Page 43

1 safety?

2 THE WITNESS: Oh, no, no. It was a move to
3 get me out of his way. There's no doubt in my
4 mind about that.

5 MR. WOLFE: Was it a touch that would take
6 place between two friends that are just, you know,
7 "I need to get into the drawer or something, could
8 you move aside?"

9 THE WITNESS: No. It was very aggressive.
10 And I have no doubt about that. He did not
11 verbalize one thing to me. He didn't say, "Do you
12 need help?" You know, he didn't say anything to
13 me.

14 MR. WOLFE: What part of your body did he
15 touch when the push occurred?

16 THE WITNESS: Well, I was like this, kind
17 of – I had her like this, both arms, kind of
18 helping her.

19 Q. (BY MR. LAKASKEY): Standing in front
20 of her?

21 A. Uh-huh.

22 Q. Okay.

23 A. Because as she was holding my arm as
24 we were walking out, I slipped my arm – I do
25 remember this because I was trying to turn her

Page 42

1 room, I just turned around and I looked at
2 control, the two officers were standing in
3 control, and I guess I don't really remember
4 saying it, but I just said I – I threw my hands
5 up and said, "I quit." And then I went in the
6 office.

7 Q. When you said that or when they said
8 you said that, were you quitting like "I quit this
9 job" or quit like "I don't know what to do. I
10 can't help the doctor anymore"? Do you remember
11 what you were thinking at that point?

12 A. Yeah, that I just quit because I can't
13 tolerate this anymore.

14 Q. You quit the job, you didn't want to
15 work there anymore?

16 A. Yeah.

17 Q. Okay.

18 A. I was so – I don't think my
19 professionalism – I've had drunk people in my
20 ambulance. Never have I been pushed to that
21 point. I was pushed to tears. I was so mad.

22 I went in the office. I knew that I
23 was upset, and I knew I needed to get away or I
24 was probably going to say something to him that
25 would just get me fired right there and probably

Page 44

11 (Pages 41 to 44)

1 deserved to be fired. Very unprofessional – I
2 felt like I could be very unprofessional at that
3 moment.

4 Q. Okay.

5 A. And I was in the office, and I was
6 just trying to regroup. And I was – I don't cry.
7 I'm not a baby, but I was so frustrated and so
8 tired of him and all of this that I just felt –
9 I'm probably like maybe a little bit more an
10 advocate. I have to say that – I really want the
11 best for these people. They're going back into
12 the community.

13 It's a p.r.n. job for me. You know, I
14 work there because I want to, not because I have
15 to.

16 Q. Okay.

17 A. And I feel like I'm doing something –
18 I hope I can do something to help these folks
19 become – have a better life –

20 Q. Right.

21 A. – and to help society too. Do you
22 know what I mean?

23 Q. Uh-huh.

24 A. And some of these folks have never had
25 the opportunity to be educated about their health

Page 45

1 A. And the incident that I had prior to
2 this, a gal, same thing, acute abdomen. I'm
3 telling him I'm putting fluid in her, she's not
4 peeing. Her belly is becoming distended. I
5 started the process early that time too.

6 He finally did come assess her late in
7 the afternoon, and he came back in the office, he
8 took me aside and brought me back in the office
9 and said – this is when – he did start treating
10 me different after this particular incident.

11 He brought me in the office and he
12 said, "They don't pay these people enough for
13 acting lessons," then he proceeded to tell me how
14 to assess the patient, how not to look at the way
15 they're acting with all their pain and all this
16 stuff.

17 And I just looked at him and I said,
18 "She is not faking."

19 Q. Uh-huh.

20 A. "She is sick."

21 And at that point he said, "Oh, fine."
22 He goes, "Call me in two hours." He said, "I'll
23 be over at ISCL," which was the Yard. He was
24 going over to do his rounds.

25 Well, I called him over at the Yard

Page 47

1 care. Nobody's ever taken the time. They've had
2 abusive pasts. The last thing they need is abuse
3 here.

4 Q. Uh-huh.

5 A. And sometimes – I don't know. It's
6 just – that probably has nothing to do with this,
7 but it's – the way he has treated people – I had
8 a similar incident where he basically says they're
9 faking.

10 Q. How long have you worked with him now?

11 A. 10 months, 10, 11 months. I was hired
12 last March, and I started complaining about some
13 of the stuff he had – that I was witnessing
14 within two weeks.

15 Q. Who did you complain to?

16 A. At the time, right when I first
17 started, we had a changeover in the management,
18 but Lisa Mays (phonetic), who was the HSA then,
19 who has documentation way back as well.

20 Q. Okay.

21 A. She's now gone. And then Andy.

22 Q. Okay.

23 A. I started to express – I shouldn't
24 say complain. Expressed concern.

25 Q. All right.

Page 46

1 that day, and we took her – I took her to the
2 emergency room the very same way. I had an IV
3 running on her. I took her.

4 And she ended up having her gut cut
5 open and had a huge bowel obstruction, which would
6 have – she had so much fluid in her belly because
7 nothing could pass that she probably would have
8 been in an acute situation and possibly septic and
9 died had we not had her to that ER and they not
10 found her problem.

11 Q. Okay.

12 A. He told me she was faking.

13 Q. After that incident did you confront
14 him about that or did he confront you?

15 A. He treated me differently.

16 Q. How so?

17 A. It was an unsaid thing.

18 Q. More respect or –

19 A. I'd say. He didn't – he didn't – I
20 never – I guess from the time I met Dr. Noak, the
21 first couple weeks, I had no respect for him. I
22 did my job and I did everything to the best of my
23 ability when I had to do his clinic. He had
24 everything he needed. I just made sure he needed
25 nothing from me.

Page 48

<p>1 Q. Okay.</p> <p>2 A. His patients were taken care of, I had</p> <p>3 all his lab reports, but I didn't make idle</p> <p>4 conversation with him.</p> <p>5 There was a few times he played little</p> <p>6 games with me, you know, like I would be doing my</p> <p>7 job and he would be standing behind me, and I know</p> <p>8 he wanted to engage in a conversation.</p> <p>9 Q. Uh-huh.</p> <p>10 A. But I have nothing to say to him.</p> <p>11 I'll give him professional courtesy. But some of</p> <p>12 the stuff I've seen him do was unacceptable.</p> <p>13 Q. And this is over a ten-month period</p> <p>14 that you've seen this.</p> <p>15 Has he –</p> <p>16 A. So he slammed a book on a counter</p> <p>17 behind me. Of course I'm going to startle. And</p> <p>18 he goes, "Oh, that was a big fly."</p> <p>19 And I just turned around. And he'll</p> <p>20 make a comment like – he just – he knows that I</p> <p>21 feel – I think he knows how I feel about him.</p> <p>22 Q. Uh-huh.</p> <p>23 A. And that I – it's unacceptable.</p> <p>24 Because one time I did speak up, and I said, "We</p> <p>25 all bleed red," because he said, "These dirtbags."</p> <p style="text-align: right;">Page 49</p>	<p>1 A. He spoke – the only two things he</p> <p>2 said to her that I was witness to was "Lay down,</p> <p>3 just lay down," the initial.</p> <p>4 Q. Uh-huh.</p> <p>5 A. And then the next thing he said to her</p> <p>6 was "Go back to your room."</p> <p>7 Q. So when he – did he check her out</p> <p>8 while you were there, checking her stomach and</p> <p>9 everything?</p> <p>10 A. Not while I was in the room.</p> <p>11 Q. What was the purpose of telling her to</p> <p>12 lay down?</p> <p>13 A. Because she was dizzy.</p> <p>14 Q. Okay.</p> <p>15 A. I had said – he seemed – he just</p> <p>16 seemed irritated. And I took it like he was more</p> <p>17 irritated with me because I was talking to the –</p> <p>18 you know, he felt like – my – this is the way I</p> <p>19 felt, this is what I perceived, that Dr. Noak was</p> <p>20 irritated with me because I was caring for the</p> <p>21 patient and getting taken for a ride.</p> <p>22 Q. Okay.</p> <p>23 A. That's the way I felt --</p> <p>24 Q. Okay.</p> <p>25 A. – based on all my interactions with</p> <p style="text-align: right;">Page 51</p>
<p>1 You know, those were his common references.</p> <p>2 Q. And speaking about the inmates?</p> <p>3 A. The inmates, uh-huh.</p> <p>4 Q. Okay.</p> <p>5 A. He called one of the inmates a "fat</p> <p>6 fuck" right in front of him and other inmates.</p> <p>7 Q. Wow. Did you hear him say anything to</p> <p>8 Norma?</p> <p>9 A. I heard him talking as they went down</p> <p>10 the hall, but I couldn't –</p> <p>11 Q. When was that?</p> <p>12 A. That particular evening after he</p> <p>13 grabbed her under the arm.</p> <p>14 Q. You don't know what he said, though?</p> <p>15 A. I couldn't hear a word that he was</p> <p>16 saying.</p> <p>17 Q. How about when you came in and took</p> <p>18 over for Karen? You said that he said "Go back to</p> <p>19 your room" or something. Did you hear him say</p> <p>20 anything about any treatment that she –</p> <p>21 A. Nothing.</p> <p>22 Q. Take care of herself or –</p> <p>23 A. Nothing.</p> <p>24 Q. So the only thing was "Get back to</p> <p>25 your room"?</p> <p style="text-align: right;">Page 50</p>	<p>1 Dr. Noak. He's always trying to tell me how I'm</p> <p>2 getting taken for a ride in so many words, you</p> <p>3 know. And I haven't – I just have real issues</p> <p>4 with a lot of the things he's done. And I've told</p> <p>5 him that I have issues.</p> <p>6 Q. What has he said to those?</p> <p>7 A. Well, he brushes me off and just, you</p> <p>8 know, pretty much let's me know that I'm</p> <p>9 insignificant.</p> <p>10 Q. Okay.</p> <p>11 A. Nothing – you know, I think my</p> <p>12 concerns are valid.</p> <p>13 Q. Every time you've worked with him, is</p> <p>14 he irritable like that or --</p> <p>15 A. Oh, he's -- I can't tell you that I've</p> <p>16 ever seen Dr. Noak ever be pleasant and happy.</p> <p>17 Q. Has he ever expressed to you any</p> <p>18 personal feelings about working there? I know</p> <p>19 you've said that he gives the inmates names. But</p> <p>20 has he ever said, you know, "This job sucks" or "I</p> <p>21 don't know" –</p> <p>22 A. No.</p> <p>23 Q. – "why I'm here"?</p> <p>24 A. No.</p> <p>25 Q. Nothing like that?</p> <p style="text-align: right;">Page 52</p>

1 A. Huh-uh. It's more so just his
2 attitude while he's there. A lot of negative
3 things, you know, about what he's seeing people
4 for. It's just constant degradation of whoever he
5 chooses that day.

6 Q. Have you ever seen him outside of
7 work, I mean like at maybe company meetings or
8 anything like that?

9 A. No. No.

10 Q. So the only person that you know
11 Dr. Noak is, I guess, an irritable guy?

12 A. Pompous.

13 Q. Okay.

14 A. He just is constantly saying things
15 that aren't appropriate at all. He will call
16 his — he talks about his P.A.s constantly in
17 front of us, how stupid they are, how incompetent
18 they are, always making negative reference. Never
19 about him. It's always about him having to clean
20 up other people's messes, you know, the inmates
21 faking.

22 Q. Okay.

23 A. I've seen him do things clinically
24 that are absolutely unacceptable.

25 Q. Like —

Page 53

1 really felt like throughout all of this, you know,
2 I had reported things, nothing ever gets done.
3 It's been this way forever. Nobody's ever going
4 to do anything about it.

5 And so the way I looked at it is the
6 only thing I can do is take good care of them.
7 You know, I can give them — I have told inmates
8 to refuse treatment.

9 Q. From him or from anybody there?

10 A. Uh-huh.

11 Q. Is he the only doctor there that comes
12 in?

13 A. He's the only M.D. —

14 Q. Okay.

15 A. — that comes over. And supposedly he
16 only comes over on cases that are difficult or,
17 you know, something that's a little bit out of the
18 scope of a P.A.

19 Q. So he makes a determination whether
20 it's difficult? Do you contact him on a lot of
21 cases and he determines whether or not to come
22 over, is that —

23 A. The P.A. does —

24 Q. Okay.

25 A. — yeah.

Page 55

1 A. One scalpel — bloody scalpel to the
2 next one.

3 Q. You've seen that yourself or have you
4 heard that?

5 A. No, I've watched him — I didn't see
6 the scalpel incident, but I have seen him use the
7 Hyphrecator one to another, which is a burning
8 instrument —

9 Q. And what did he do with that?

10 A. — with no lidocaine.

11 Q. What do you do with the Hyphrecator?
12 I've never seen one.

13 A. Its tips are disposable.

14 Q. Okay.

15 A. So basically you would — you can burn
16 warts. Most of the time that's what it's used for
17 is like a wart-type removal.

18 Q. Okay.

19 A. Cysts and stuff are usually done with
20 scalpels.

21 Q. Okay. Did you report any of those
22 incidents?

23 A. Not formally, no.

24 Q. Informally did you —

25 A. And that's my fault. To be honest, I

Page 54

1 Q. Okay.

2 A. The only time I ever really — like
3 cardiac people, if I have an urgent care, I'll put
4 them in, you know, directly with him for
5 follow-up. And most of those would be cardiac.

6 Q. Okay. So Karen, the doctor is her
7 supervisor?

8 A. Uh-huh.

9 Q. How do you fall in under this? Is
10 Karen your supervisor, or are you like independent
11 or —

12 A. Yeah, I would say Karen. Pretty much
13 we answer to the P.A.s. We — if you look at a
14 normal standard clinical environment, you know,
15 you might have an M.D. who's providing the
16 services. In every setting that I've worked in
17 clinically, I've worked directly under a
18 physician.

19 Q. Okay.

20 A. So I guess you could say it's the
21 nurse, I would be the nurse that facilitates the
22 care of — and with regard to getting lab work,
23 drawing labs, you know, sort of facilitating.

24 Q. Okay.

25 A. The P.A. would be the provider in this

Page 56

1 case. Dr. Noak would be somebody that consults.
2 So the way PHS works is they have an
3 overseeing physician, but they have the P.A.s who
4 provide the daily care –

5 Q. Okay.

6 A. – and treatment and management of the
7 patients.

8 Q. I see.

9 A. The other thing that we have as a
10 responsibility is we are also responsible –
11 because there's times where there's not an M.D. or
12 a P.A. on site. So we are responsible for any
13 care during that period of time, emergent,
14 semi-emergent care. At least I can suture or, you
15 know, do those kinds of things. And we kind of
16 follow standing written orders.

17 Q. Okay. Now, to transport a patient
18 off, do you have to get approval from the doctor?

19 A. Uh-huh.

20 Q. Okay.

21 A. Oh, yeah.

22 Q. Going back to the incident where he
23 came in and took her, did you see Norma's
24 expression when he grabbed her?

25 A. Well, that's the thing, is as I was

Page 57

1 getting her out the door, she became tearful
2 because she – and she was telling me she was
3 going to go down.

4 Q. Uh-huh.

5 A. And that's when I was trying to talk
6 her through. As I was – I did not see her at the
7 point – and it's nice that you call her "Norma."
8 It is.

9 Basically, he was in my way – do you
10 know what I mean? – my visual with her. All I –
11 she was pretty much just turned.

12 Q. Okay.

13 A. The other thing that upset me is he
14 grabbed her arm that she got caught in a washing
15 machine. That whole shoulder had been
16 reconstructed. And it's – the other arm, I
17 can't – I guess the thing is is that I knew she
18 already – this is a very tender area for her. It
19 doesn't have full range of motion. And he just
20 grabbed her under that arm.

21 Q. Would he have known that?

22 A. He should have.

23 Q. Was that in her chart or anywhere?

24 A. Oh, yeah.

25 Q. Okay.

Page 58

1 A. And the other arm you can't straighten
2 clear out because she had a car accident and, you
3 know, it broke the olecranon process so you can't
4 straighten that arm out. I know that. He should
5 know that, in my opinion.

6 Q. As they're walking down the hall, do
7 you see her looking up at him, or is she not
8 making – trying to make any eye contact?

9 A. No, I heard – what I could hear is –
10 you know, how you'll hear a tone, you can hear a
11 tone. It was a low tone, but I could not make out
12 specific words.

13 Q. Okay.

14 A. And those hallways are – the
15 acoustics are pretty good, you know, but I really
16 just couldn't hear specific words.

17 Q. Okay.

18 A. And I was trying to listen, but I
19 couldn't. And the hall was pretty quiet.

20 There was two gals, I remember, coming
21 out of the bathroom, and I wish I could remember
22 who they were as these two were approaching. But
23 they had backed up and went back in the bathroom.

24 Q. They saw them coming down?

25 A. But I don't know who it was.

Page 59

1 Q. Okay.

2 A. Yeah, I just cannot – I've been
3 racking my brain trying to think of who it was,
4 and I just don't know. But they might have heard
5 what he was saying.

6 Q. My other question is, do you want to
7 be a victim? I mean you're a victim of a battery.

8 A. Uh-huh.

9 Q. Do you want me to list you as a victim
10 on this? Do you want to be a – I mean right now
11 you're also a witness to what happened with Norma.

12 A. Uh-huh.

13 Q. I mean you're – I mean you can make a
14 decision here if you want to be a victim, too, or
15 if you just want to be a witness.

16 A. I want this taken care of.

17 Q. Okay.

18 A. I want it to stop. And after my
19 meeting the other day, it's not going to if it's
20 left at the level that -- at the PHS level.

21 Q. I don't – I don't know how far your
22 other complaints are or other complaints from
23 other people have gone.

24 A. They haven't gone anywhere. Nobody
25 complains. And I fell into that too. And I feel

Page 60

15 (Pages 57 to 60)

1 that's what – I feel terrible about it.
2 Q. Uh-huh.
3 MR. WOLFE: And I think that's more of an
4 issue for me. Obviously, I'm very serious about
5 this matter and, you know, clearly I'm going to
6 ask you some questions when the detective is done
7 in regards to that issue –
8 THE WITNESS: Uh-huh.
9 MR. WOLFE: – as kind of a follow-up.
10 MR. LAKASKEY: I'm almost done here.
11 Q. And like I said, it's your decision if
12 you want to be considered a victim in this where
13 there would be two battery charges rather than
14 one.
15 A. I almost feel an obligation to do
16 that –
17 Q. Okay.
18 A. – because I'm not in prison.
19 Q. Okay. Well, I will go ahead and list
20 you as a victim also, then.
21 A. Okay.
22 Q. And what I'm going to do is I'm going
23 finish my report. I'm going to try to talk to the
24 doctor and see if he will talk to me, and then
25 route the report to the prosecutor.

Page 61

1 If Dr. Noak says – and there's been other
2 incidences where if Dr. Noak says this, then
3 that's the word. He is the be-all-end-all.
4 Q. Okay.
5 A. He does see patients at SICI because
6 we do not have – SICI and South Boise do not have
7 a physician on site. The Yard, ISCI has
8 Dr. Bailey who is an on-site, but Dr. Noak still
9 oversees Dr. Bailey.
10 Q. Okay.
11 A. And so Dr. Noak just happens to be the
12 one who provides the M.D. services for us because
13 we don't have, you know, an on-site. It's a
14 lesser – the majority of our folks are not as
15 medically involved, so they don't need an
16 infirmary type care –
17 Q. Uh-huh.
18 A. – you know, so that they can put them
19 on medical hold and send them back to the Yard,
20 you know, if they become more medically needy.
21 And Dr. Noak is one that probably would be
22 involved – you know, he's the one who kind of
23 makes that decision.
24 Q. So do you think he has the power to --
25 could he – if Norma didn't recuperate, do you

Page 63

1 A. Uh-huh.
2 Q. And see if they'll take the case on
3 this.
4 Do you know – he worked for PHS also.
5 So his main job site is over at the Yard or is
6 he –
7 A. My understanding is Dr. Noak – he's
8 always told me he's the state medical director.
9 He is PHS's medical director, so therefore he
10 oversees PHS. He doesn't work for the state.
11 Q. He oversees PHS in Idaho or around the
12 country?
13 A. In Idaho.
14 Q. Okay.
15 A. So I sort of was led to believe that
16 he worked for the State and oversaw all the
17 medical stuff. Come to – he oversees the – PHS
18 has the state medical contract for the prison
19 system, and he is their medical director.
20 Q. Okay.
21 A. So what he does is he sort of oversees
22 all the facilities, and he's a consultant to
23 difficult cases.
24 Q. Okay.
25 A. But he does have the ultimate power.

Page 62

1 think he has the power to send her to Pocatello?
2 A. I guarantee you he does. He's already
3 done it to a person that I became pretty much
4 depressed over who had an airway problem that he
5 took away some meds.
6 Q. And how does he – he just goes to the
7 Department of Corrections and says "She's not fit
8 to be here"?
9 A. Well, basically it's pretty easy
10 because there's enough of a medical problem for
11 this person, they're too involved to be at this
12 facility, they got to go. So it's all done, and
13 the focus is all medical.
14 Q. Okay.
15 A. What people don't understand – and I
16 brought this to the attention of the officers,
17 even, because I was so distressed in this other
18 case that I went to the lieutenant and said, "You
19 have to do something here," because he's basically
20 screwing with this person's life. She's about
21 ready to get out.
22 Q. Uh-huh.
23 A. And he sent her back to Pocatello.
24 Q. And over in Pocatello they got 24-hour
25 medical care?

Page 64

<p>1 A. Uh-huh. That's where the women would 2 have to go. Because here the guys at SICI could 3 just go back to the Yard – 4 Q. Right. 5 A. – because that's where the infirmary 6 is, because the majority of the prison system's 7 folks are here in Boise, it seems. It's the 8 biggest facility, from what I understand. 9 Q. So is that the reason why he would 10 send somebody back to Pocatello is because the 11 continuous coverage, medical, or why would he – 12 why would he do that, other than – I mean 13 specially with somebody with – I mean Norma gets 14 out in April, as she was saying. 15 A. Right. 16 Q. And I guess he brought up the fact 17 that he could send her back if she doesn't heal or 18 something like that. 19 A. That's pretty common. He threatens a 20 more restrictive environment fairly regularly. 21 Q. Okay. 22 A. And I've been a witness to that more 23 times than just once. 24 Q. Now, you said he (unintelligible), 25 he's the medical director.</p>	<p>1 cancel them. He has blatant disregard for any – 2 because they're in prison, they're on his time, 3 you know, he gets – and that's the way it has 4 always been. 5 Q. Okay. 6 A. So what I do when I'm there – and I 7 know a lot of the other folks do, we send them 8 back because he's – it's a rarity that – if you 9 look at times he's seen his patients, he has the 10 same schedule every time between 10:30 and noon, 11 typically, is when we schedule his patients. 12 We fax a call-out to him the night 13 before. And typically, it will never go through 14 to his house, like it's supposed to, because he's 15 the one who wants us to do that. But there's just 16 blatant disregard for these people. 17 Q. Okay. 18 A. And he has no qualm about his time is 19 more important. 20 Q. How can I – does he have a private 21 practice, you know, in town or anything that you 22 know of? 23 A. You know, I believe – what he's made 24 mention to me in the past is I think he did. And 25 then since – I don't know whether it was – he</p>
<p>1 I don't know, I'm thinking if somebody 2 with that type of title, actually going out and 3 helping people is something that – you know, when 4 I think of a director, I'm thinking of somebody, 5 you know, behind a desk, signing off on paperwork 6 and sending it through. 7 A. Uh-huh. 8 Q. Do you think with him coming out and 9 helping these inmates, do you think that's 10 burdensome for him, or is that something he 11 normally does? I mean – 12 A. No. 13 Q. Okay. 14 A. He does it because he has to. 15 Q. Okay. 16 A. And the majority of times he will be 17 late. The inmates that come up, you know, that we 18 schedule them, they have to do what they have to 19 do. You know, we put them on the call-out, they 20 have to be there. You know, that's just the way 21 the system works. 22 Q. Uh-huh. 23 A. He may be two hours late, never call, 24 nothing, then finally call, and they've been 25 sitting there for two hours waiting, and he'll</p>	<p>1 took this position because that was dwindling away 2 or what occurred, but apparently – he's made 3 mention of the fact that he might even see 4 patients in the evening sometimes in I believe 5 it's Marsing. 6 Q. Okay. Do you know how I can get ahold 7 of him? Phone number, business, home, or anything 8 like that? 9 A. Yeah, you can always get ahold of him 10 through the prison, through SICI. You could call 11 Andy. 12 Q. Okay. 13 A. And Andy has his pager and his cell 14 phone and – 15 Q. What's his number? Do you know? 16 A. Andy's number is 333-0037. 17 But I've worked with a lot of 18 physicians, the cream of the crop. And that's the 19 way he presents is – well, and I hate to say 20 this, but the saying – we all kind of – it's 21 like it's good to be king. 22 Q. Uh-huh. 23 A. Because basically he walks around and 24 is never questioned, and it's just – it's a 25 terrible situation. It really is. And the</p>

<p>1 officers have expressed it.</p> <p>2 Q. Uh-huh.</p> <p>3 A. They want to transport somebody</p> <p>4 they're not comfortable with, and they can't do</p> <p>5 anything about it, you know, because our physician</p> <p>6 has to say yes.</p> <p>7 I fought with them one evening over a</p> <p>8 cardiac patient, who did finally end up having</p> <p>9 endocarditis and then was sent to the Yard. But I</p> <p>10 finally just said, "We're transporting." And I</p> <p>11 stepped out of my scope and said, "We're doing</p> <p>12 it," because I knew – and I was ready to lose my</p> <p>13 job at that point. And I have – that's where I'm</p> <p>14 at. I'm ready to lose my job over everything</p> <p>15 anymore.</p> <p>16 Q. Uh-huh.</p> <p>17 A. Because it's not worth being there if</p> <p>18 I can't take care of these people, because I have</p> <p>19 an obligation to them.</p> <p>20 Q. (Unintelligible) after this incident?</p> <p>21 A. (Unintelligible) because it's what is</p> <p>22 the right thing to do. Because if I walk away and</p> <p>23 don't stand up, I'm no better. I'm 40 years old.</p> <p>24 You know, it's kind of like I'm past that. I need</p> <p>25 to be at the top of the ladder. I don't need, you</p> <p style="text-align: right;">Page 69</p>	<p>1 stepped in and aggressively grabbed her.</p> <p>2 Did you see the type of grip he had on</p> <p>3 her arm?</p> <p>4 A. I saw him – I think – no, I did not</p> <p>5 see whether he grabbed her arm, but I saw him –</p> <p>6 when I saw him go down the hall, he had her arm</p> <p>7 over his arm, and she was just yanked up on him –</p> <p>8 Q. Okay.</p> <p>9 A. – like right up on him.</p> <p>10 Q. Okay.</p> <p>11 A. And that's what led me to believe she</p> <p>12 was probably leaning on him.</p> <p>13 Q. Okay.</p> <p>14 A. Later I found out she – he was</p> <p>15 dragging her. Well –</p> <p>16 Q. You found that out from who?</p> <p>17 A. Norma.</p> <p>18 Q. Okay.</p> <p>19 A. She came to me, oh, gosh, 45 minutes,</p> <p>20 40 minutes after the incident to get her</p> <p>21 medication. Because I want her up walking around</p> <p>22 if she can do that. You know, we need to keep her</p> <p>23 moving because things stop. But she came up and</p> <p>24 told me what he had done. She said that he – and</p> <p>25 she was tearful.</p> <p style="text-align: right;">Page 71</p>
<p>1 know, Dr. Noak to approve of me. Do you know what</p> <p>2 I mean? I don't anymore. What I need is to be</p> <p>3 able to go to work every day and to be able to</p> <p>4 sleep every night knowing that I did the best I</p> <p>5 could do in an honest way.</p> <p>6 Q. Uh-huh.</p> <p>7 A. You know, we all make mistakes, and I</p> <p>8 know there's hardened criminals. I do. I'm</p> <p>9 not – and, you know, I'm not stupid. I've been</p> <p>10 out there, you know. But I do believe – and I</p> <p>11 have seen people change. I have watched them, you</p> <p>12 know, yes, I've only been there 11 months.</p> <p>13 But sometimes it takes one interaction</p> <p>14 with somebody to make them look inside and find a</p> <p>15 part of themselves they never knew was important</p> <p>16 or existed.</p> <p>17 Q. Uh-huh.</p> <p>18 A. So...</p> <p>19 Q. Okay.</p> <p>20 A. I just don't think they deserve any</p> <p>21 less than everybody else.</p> <p>22 Q. All right. Well, I think I'm pretty</p> <p>23 much set on this. I mean just going over this,</p> <p>24 you tried to – you were trying to help Norma, I</p> <p>25 guess, slide down the wall, and that's when he</p> <p style="text-align: right;">Page 70</p>	<p>1 Q. Uh-huh.</p> <p>2 A. And she thought she had gotten me in</p> <p>3 trouble. And I said, "What are you talking</p> <p>4 about?"</p> <p>5 And she said that when he grabbed her</p> <p>6 and took her down that she was like on her</p> <p>7 tiptoes. She said he had her up so hard, and she</p> <p>8 said it hurt so bad. She said, "I asked him to</p> <p>9 release" – she said, "I asked him to let go, that</p> <p>10 he was hurting me."</p> <p>11 Q. Uh-huh.</p> <p>12 A. And she said, "Can he really send me</p> <p>13 to Pocatello? Is he going to send me to</p> <p>14 Pocatello?"</p> <p>15 And I said, "What?" I didn't realize</p> <p>16 any of that had occurred.</p> <p>17 Q. Uh-huh.</p> <p>18 A. And at that point I said, "Norma" – I</p> <p>19 just said, "You need – I'm – it's a conflict of</p> <p>20 interest," because I was so angry and, you know, I</p> <p>21 said, "This just isn't – I'm not the right person</p> <p>22 to be telling this to. You need to go to your</p> <p>23 officer and follow your procedures, whatever that</p> <p>24 is." I don't know what they are. "But if he did</p> <p>25 that to you, this is not a nursing problem, this</p> <p style="text-align: right;">Page 72</p>

1 is a security issue."
 2 And then I talked to Officer Jackson.
 3 And he said, "That's correct." And she did go to
 4 him.
 5 Q. Okay.
 6 A. I did not push her to go to him. I
 7 just said, you know, "If you're hurt, then I need
 8 to see you, you know, if he hurt you."
 9 But then I told Officer Jackson that I
 10 really felt like I wasn't objective enough to see
 11 her and that he needed to have somebody else look
 12 at her.
 13 Q. Did you even glance at her arms to see
 14 if there was any injuries?
 15 A. She had clothing on, and I didn't.
 16 Q. Okay. Do you know who saw her?
 17 A. I believe they brought her down to see
 18 Rosemary, who was a staff relieving me.
 19 Q. Okay.
 20 A. And this was at like 5:30, 6:00,
 21 because she was two hours late, Rosemary was.
 22 And she immediately was like, "I'm not
 23 getting involved."
 24 Q. Oh, really?
 25 A. She's a piece of work.

Page 73

1 Q. Did she eventually see her, though?
 2 A. Apparently she did. Not in my
 3 presence.
 4 Q. Okay. Did you ever read the chart to
 5 see if there were any injuries afterwards? I
 6 mean —
 7 A. When I reviewed my stuff, yes, I did.
 8 I saw that Rosemary had looked at her at the
 9 request of the officer and that she didn't see
 10 anything.
 11 Q. She didn't note any injuries or
 12 anything like that?
 13 A. Huh-uh.
 14 Q. Oh, did you — I forgot my question.
 15 Oh, when Norma was — when you were trying to put
 16 Norma down, you didn't call for help or anything
 17 like that?
 18 A. No.
 19 Q. Okay. He just kind of —
 20 A. She's a little thing.
 21 Q. Why do you think he came out? Could
 22 he see what was happening? Could he hear what was
 23 happening?
 24 A. He was — it goes right back to what I
 25 felt from the beginning. He was irritated with

Page 74

1 me. He thought she was playing me, and he was, by
 2 God, going to take control and get her to her
 3 room. That's exactly the way it felt.
 4 Otherwise, he would have said, "What's
 5 going on? You know, can I help?" This was in no
 6 way an effort to assist me.
 7 He thought she was playing me, and he
 8 was irritated about it.
 9 And all I can say is I think he was
 10 probably — the way I felt at the time, because he
 11 usually interacts with me —
 12 Q. Uh-huh.
 13 A. — he would have told me what her plan
 14 of care was, this is what we're going to do with
 15 her, blah, blah, blah, "Now you can take her back
 16 to her room." You know, our normal interactions,
 17 there was nothing even close to that that day. He
 18 was put out that I was falling for this faking
 19 patient, is the way I felt.
 20 Q. You said you've kind of helped the
 21 inmates before in that type of way, and he would
 22 pull you aside and say something.
 23 A. Uh-huh.
 24 Q. Would he normally do that with every
 25 person he thought —

Page 75

1 A. Yeah.
 2 Q. — were (unintelligible) or helping
 3 out?
 4 A. The normal standard is when a
 5 physician treats a patient or assesses a patient,
 6 they usually give us, you know, the follow-up
 7 instructions.
 8 Q. Okay.
 9 A. And then we — because he doesn't want
 10 to talk to them, for sure. You know, that's the
 11 last thing. I just had a guy who was on — being
 12 treated for AIDS. He's actually being put on the
 13 antivirals and all of that stuff.
 14 Q. Uh-huh.
 15 A. Big, huge process where he should have
 16 had informed consent.
 17 Dr. Noak didn't talk to him. He said,
 18 "This is what we're putting you on." And he said,
 19 "They'll explain it all to you out there."
 20 Q. Okay.
 21 A. So, you know, his normal, he deviated
 22 greatly from what he would normally do with an
 23 individual like that, because even after the other
 24 assessment on Benger (phonetic), the one who ended
 25 you up having all the surgery, he came into the

Page 76

19 (Pages 73 to 76)

<p>1 office and said – you know, he talked to me about 2 that patient and their plan, what we're going to 3 do. He thought she was faking. You know, he 4 still interacts. He should have told her, "This 5 is what's going on. This is what I think." 6 Q. Right. 7 A. You know, "Follow up with the nurse." 8 Q. You didn't hear anything like that? 9 A. There was no verbalization at all 10 about her plan of care or what he even thought. 11 Q. Okay. After you took Norma back 12 down – or after he took Norma back down, he came 13 back. 14 Did – was anything said between you 15 and – 16 A. He never did come and talk to me. 17 Q. How about did you talk to Karen about 18 the incident afterwards? 19 A. I had gone in the office and basically 20 was getting over my little tantrum when Karen 21 stepped in. 22 Q. All right. 23 A. And I just told her at that point that 24 I just will not be associated with this kind of 25 care and this kind of treatment. And I just said,</p> <p style="text-align: right;">Page 77</p>	<p>1 Q. Have you seen him since? 2 A. I went and told the officers. 3 I did. I saw him on Monday, and he 4 did not even give me eye contact. He had to come 5 in to see a patient that I saw over the weekend, a 6 cardiac patient that we did not transport. I just 7 managed him. He was manageable. I worked with 8 the P.A., and then he had – I had put him in 9 Monday for evaluation by Dr. Noak. 10 And he did not – this chart was 11 extensive. And he didn't even talk to me about 12 the patient, didn't even – and I was right there 13 the whole morning. Did not – 14 Q. Didn't ask any question about – 15 A. – ask me question one. 16 Q. Nothing about this incident, he didn't 17 say anything? 18 A. The only thing that happened within my 19 earshot when I was in the pharmacy, he took 20 another one of the gals, a CMS up at SICU, because 21 I work both places. 22 Q. Okay. 23 A. He took her – he sat down with her, 24 and I had had another problem with one of his 25 patients over the weekend that had a – sort of a</p> <p style="text-align: right;">Page 79</p>
<p>1 "I don't know what to" – I was just upset, and 2 Karen just pretty much tried to calm me down and 3 get me back on track. And we didn't speak about 4 anything. He was still there, I believe, at that 5 point. 6 Karen kind of has to walk on pins and 7 needles. He can fire her in a second. He cannot 8 fire me. 9 Q. Okay. 10 A. You know, so Karen's in a little 11 more – her situation is a little different than 12 mine. He is her direct supervisor. And 13 basically, she went back to her office, and I 14 finished up with what I had to do. I got myself 15 back on track, finished pill card exchange where 16 they exchange, you know, their prescription pill 17 cards. 18 Q. Uh-huh. 19 A. Did that, still thought he was there. 20 The door was open. And I went to look, and he was 21 gone. He never said anything to me. Never 22 brought the charts back to me. 23 He left two charts laying in a room 24 unsecured. Never told us he was gone. I don't 25 know how long he had been gone. I have no clue.</p> <p style="text-align: right;">Page 78</p>	<p>1 complication of a treatment that he provided. And 2 I had seen this guy both days over the weekend, 3 wanted Dr. Noak to see him. 4 Q. Uh-huh. 5 A. And Vicki was telling him about the 6 patient. And he was basically saying – blowing 7 that off. And it was – but then he said, "I need 8 you to come down to South Boise with me for a 9 couple hours." 10 And I just kind of overheard -- he 11 knew I could hear. I was right behind him. And 12 he said, "Plus, you probably need to get out of 13 here for a while." And this was totally out of 14 character for him. This was like buddying up or 15 something. It was just weird. 16 Q. Uh-huh. 17 A. And I didn't give it any – I just 18 walked away. 19 Q. And there would be no reason for him 20 to bring – 21 A. She doesn't know, no. There's no 22 reason. So I don't know what that was all about. 23 And I just assumed it was for my benefit, and just 24 blew it off, basically. 25 Q. Okay.</p> <p style="text-align: right;">Page 80</p>

<p>1 A. Because I'm sure the lieutenant would 2 handle it if he came walking in. And do you know 3 what I mean? It's just like I'm not going to get 4 into that.</p> <p>5 Q. All right. Is there anything else you 6 can tell me about this? I mean I think I've asked 7 all the questions I have. But if there's 8 something else that you can remember that we 9 haven't gone over about the specific incident and 10 when he came in and --</p> <p>11 A. All I can tell you is I got the drift 12 that -- from Rick Dole, because the very first 13 thing he said, it was -- I know he's talked to 14 Dr. Noak about the incident. He told me he 15 hadn't, he just wanted to get my story. And --</p> <p>16 Q. Rick is --</p> <p>17 A. The head of PHS, the regional 18 director.</p> <p>19 Q. And you talked to him when?</p> <p>20 A. Monday.</p> <p>21 Q. Okay.</p> <p>22 A. They asked to come talk to me. And 23 that's when they found out about the possible 24 criminal -- or charges being pressed within 30 25 minutes. Andy was not aware of it. Andy was</p> <p style="text-align: right;">Page 81</p>	<p>1 A. South Boise. He met with Karen, 2 myself, and Andy was there.</p> <p>3 Q. And --</p> <p>4 A. And it sounded like Dr. Noak was 5 saying that he was assisting me. You know, 6 "You're kind of a slight person."</p> <p>7 Q. Was he there, too, at this meeting?</p> <p>8 A. No. No.</p> <p>9 Q. Okay.</p> <p>10 A. But Rick said, "You're a slight 11 person, and you don't think he could have been 12 helping?"</p> <p>13 And I'm like, "I lift 200-pound people 14 every day." He knows what I do for a living. He 15 knows I'm fully capable, and if I need assistance, 16 I would ask.</p> <p>17 Q. Uh-huh.</p> <p>18 A. You know, it was just...</p> <p>19 Q. Was Karen there with you when you guys 20 were up -- trying to take Norma down the wall?</p> <p>21 A. Karen had come out of her office just 22 as all this occurred.</p> <p>23 Q. Okay.</p> <p>24 A. So she was front side of us. I was 25 like this with her, with the patient, going down</p> <p style="text-align: right;">Page 83</p>
<p>1 talking to me. I was sitting in there, and Andy 2 immediately called Rick. Well, within 20 minutes 3 Rick wanted to have a meeting with me.</p> <p>4 Q. How do you think he found that out? 5 Because I haven't -- I haven't contacted anybody.</p> <p>6 A. Andy?</p> <p>7 Q. Yeah. About the criminal.</p> <p>8 A. Oh, I think that's just charges.</p> <p>9 Q. Okay.</p> <p>10 A. It was mentioned, and then the 11 lieutenant. I mean it's kind of because Andy's 12 over both places.</p> <p>13 Q. Okay.</p> <p>14 A. And Andy and I were talking, and he 15 told -- he called Rick and said Rick wasn't aware 16 of it, and so then Rick came down. And pretty 17 much damage control.</p> <p>18 Q. Okay.</p> <p>19 A. And it was like this plan. It wasn't 20 about listening to me at all. It was about 21 redirecting and, you know, minimizing and --</p> <p>22 Q. Right. Right.</p> <p>23 A. Yeah, I wasn't happy at all at the end 24 of that.</p> <p>25 Q. Where did you have that meeting at?</p> <p style="text-align: right;">Page 82</p>	<p>1 the wall, and Karen came out. I saw Karen's face. 2 Her face just like went white. I do remember 3 that, when all of a sudden I was pushed aside.</p> <p>4 Q. Okay.</p> <p>5 A. And Karen didn't -- Karen stood there 6 like she was lost. We were both just sort of 7 flabbergasted about the whole situation.</p> <p>8 Q. Uh-huh.</p> <p>9 A. And she immediately retreated to her 10 office again. And I just stood in the hall kind 11 of -- I don't know what I think I was doing, but I 12 was just standing there, just in disbelief, 13 really.</p> <p>14 Q. Now, when you first came in, you said 15 that you had talked to the company.</p> <p>16 Is that what you meant by talking to 17 Rick on Monday?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Okay. And they didn't want -- he 20 didn't want you to come and talk about --</p> <p>21 A. Basically, in so many words, he 22 expressed the concern about IDOC. And when I 23 expressed some of the other concerns -- because he 24 was minimizing everything that occurred.</p> <p>25 Q. Uh-huh.</p> <p style="text-align: right;">Page 84</p>

1 A. He wasn't listening to what I was
2 saying. He had no intention of listening to what
3 I was trying to tell him. And that's what I
4 understood the meeting was about. I was told he
5 wanted to hear what happened from me.

6 Q. Uh-huh.

7 A. That is not at all what he wanted to
8 hear. He already had a plan in mind.

9 And when I started to -- I just got a
10 little aggressive, and I said -- you know, he was
11 justifying Dr. Noak's actions. He said he's known
12 him -- and I thought he was going to say 10 or 15
13 years, you know, and he tells me 5 months. And
14 he's like, "The guy's brilliant." And he's just
15 going on and on. And I thought, Here I sit.
16 Here's another brick wall.

17 Q. Uh-huh.

18 A. And basically minimized every single
19 thing, and then tried to redirect it into "We're
20 going buy you this. We're going to do this.
21 We're going to get a CPAP machine."

22 I've been around awhile, you know. I
23 used to manage group homes in Cleveland, and I've
24 worked for companies where they play the game.

25 Q. So you think he was, I guess, enticing

Page 85

1 Q. Well, my next -- my next step is to
2 see if he'll want to talk to me. And it sounds
3 like he may already know what's -- what may be
4 happening or has a pretty good idea. But I'm
5 going to try to talk to him and let him know that
6 there's allegations that this occurred, and send
7 it off to the prosecutor.

8 A. Well, and the way I feel about it is
9 I've watched neurosurgeons in the O.R. throw
10 tantrums, throw trays of stuff, act like babies.
11 Never once have I ever seen them touch another
12 individual, you know, push a nurse out of the way,
13 nothing.

14 And I know it sounds minimal, he
15 didn't punch me or he didn't punch her, but he
16 certainly way stepped over the line, in my
17 opinion, by grabbing her. That's my job to assist
18 her down the hall. That's not an M.D.'s job. You
19 know, I'm the peon, not him.

20 Q. Have you ever seen him do this to
21 another inmate?

22 A. Never.

23 Q. How about has he ever done it to you
24 or a P.A. or anything like that?

25 A. Not that I've seen.

Page 87

1 you with all this new stuff or whatever to --

2 A. He was trying to get the focus off of
3 what it was. And then what he did say was "That's
4 a separate issue. That's a separate issue. And
5 that when you talk to IDOC, because they will
6 probably investigate this, you need to keep these
7 issues separate."

8 And I said, "But you're not
9 understanding what I'm saying. This is the straw
10 that broke the camel's back for me. All this has
11 been going on, and this is why today I'm saying
12 no, I'm not backing off, because you guys won't do
13 anything. You have documentation from way back
14 about this stuff occurring, from him drinking out
15 of your pop."

16 We have to hide our food because he
17 will drink our pop. The first day I had chili and
18 crackers -- the first day I met the man, I walked
19 over, he has my crackers in my chili and is eating
20 it.

21 Q. Wow.

22 A. So that's where the "It's good to be
23 king" came in. You know, I know it's a
24 terrible -- it's not funny, but it is just so
25 appalling it's almost unbelievable. And I just --

Page 86

1 Q. Okay.

2 A. Not that I've seen.

3 MR. LAKASKEY: Well, I think I pretty much
4 have enough -- I have the whole story there.

5 Steve might have some questions.

6 MR. WOLFE: Okay.

7

8 EXAMINATION

9 BY MR. WOLFE:

10 Q. Janna, again, my name is Steve Wolfe,
11 and I work for the Department of Corrections as
12 their chief investigator for the Office of
13 Professional Standards. Okay? I appreciate you
14 taking the time to talk to both of us today.

15 And although the detective is focusing
16 on a criminal aspect, I'm focusing on the staff
17 misconduct issue of this incident. So I have a
18 couple questions to ask you, and I want you to
19 just answer them to the best of your ability.

20 Now, first of all, what is your
21 position at the South Boise Women's Correctional
22 Center?

23 A. I'm a CMS.

24 Q. Okay. What does that stand for?

25 A. Correctional medical specialist.

Page 88

<p>1 Q. Okay. And you – I think you said you 2 worked there for about ten months; correct? 3 A. Actually going on a year in March. So 4 close to a year. 5 Q. Okay. Just give me a basic thumbnail 6 sketch of your education and training. 7 A. I have a bachelor's in social work. 8 Q. Okay. 9 A. I worked with mentally ill, mentally 10 retarded populations, as well as the private 11 sector. 12 Q. Okay. 13 A. And I went on to – into emergency 14 medicine. I have a medical assisting degree – 15 Q. Okay. 16 A. – which is clinical. Okay? As 17 opposed to emergent. I am also a critical-care 18 paramedic. 19 Q. Okay. 20 A. So all in total, about seven, almost 21 eight years. 22 Q. So you have a significant amount of 23 education and training in both dealing with 24 patients and the medical care aspect? 25 A. Uh-huh.</p> <p style="text-align: right;">Page 89</p>	<p>1 A. I think the – I would have to say the 2 index of suspicion for her having something fairly 3 significant would be moderate to high. 4 Q. Okay. All right. And when Rick Dole, 5 I think you said, came out and spoke to you, this 6 was on what day? 7 A. Monday, this past Monday, so – 8 MR. LAKASKEY: 9th? 9 THE WITNESS: Yeah, if that was Monday. 10 Q. (BY MR. WOLFE): Okay. Was there 11 anything said in that meeting between yourself and 12 Rick Dole or anybody else in that meeting where 13 you formed the impression that they were getting 14 you to limit your testimony or change your 15 testimony or do anything at all to cause you to 16 vacillate one way or the other? 17 A. I – I felt like the situation was 18 being minimized. 19 Q. Okay. 20 A. That the concerns I was expressing 21 were being skirted and I was being redirected. 22 The thing that I felt he was concerned 23 about was that this should have been handled – he 24 stated that it should have been handled 25 internally, that it should never have gone outside</p> <p style="text-align: right;">Page 91</p>
<p>1 Q. Okay. Do you work anywhere else, 2 other than out at the prison? 3 A. I do. 4 Q. Where else do you work? 5 A. I'm a critical-care paramedic for 6 Payette County. 7 Q. Okay. How long have you been working? 8 A. In the medical field? 9 Q. Yes. 10 A. About eight years. 11 Q. Okay. Would you consider the Boise 12 Women's Correctional Center a safe working 13 environment? 14 A. Very much. 15 Q. Okay. And when dealing with any of 16 the doctors or the other P.A.s out there, would 17 you consider that they're promoting a safe working 18 environment? 19 A. I would say yes, as far as – 20 Q. Okay. 21 A. I think security has more to do with 22 that aspect. 23 Q. Okay. What is your impression of the 24 seriousness of Norma's medical condition on or 25 about January 30th?</p> <p style="text-align: right;">Page 90</p>	<p>1 PHS, and that he wished he had that opportunity, 2 and that these issues were separate, previous 3 versus this incident should be separate with 4 regard, and that if I wanted to address the 5 previous issues, that I could do that with him. 6 So in essence, telling me – I can't 7 tell you the exact words, but that IDOC certainly 8 was going to be investigating this, and that I 9 needed to kind of stick with just the incident at 10 hand, as opposed to all the previous concerns that 11 I had had. 12 Q. Did anybody, either Rick Dole or 13 anybody from PHS, try to give you additional 14 information or have you keep from providing any 15 information during the criminal investigation or 16 try to get you to change your testimony at all? 17 A. Not outright, not specific. You know, 18 that was never verbalized as such. 19 Q. Was it intimated or alluded to? 20 A. I would have to say yes with regard to 21 like trying to minimize, making excuses for this 22 man's behavior. 23 Q. Okay. 24 A. "You know how quirky physicians are" 25 and how this and that, telling me he's brilliant.</p> <p style="text-align: right;">Page 92</p>

1 Q. Who does Andy work for? For us?
 2 A. Andy works for PHS.
 3 Q. Okay.
 4 A. Yeah.
 5 Q. Okay. What is Fender Salenas' status
 6 right now?
 7 A. I don't know. She is a rider at South
 8 Boise.
 9 Medical status?
 10 Q. Yes, medical status.
 11 A. At this point in time, something
 12 needs — she is one of those people that would be
 13 put into a category of needing intervention of
 14 some kind, and that's where she was at, was in
 15 that diagnostic process.
 16 Q. Is Dr. Noak seeing to that
 17 intervention?
 18 A. Karen had done the initial tests.
 19 Q. Right.
 20 A. Initiated medication therapy. The
 21 patient was not responding. She got approval for
 22 this thyroid scan, which is more definitive
 23 diagnostically. Dr. Noak at that point is the one
 24 who Karen's having — Karen's doing everything she
 25 can. Now it has to go to Dr. Noak — Noak as like

Page 93

1 a plan of care, next step for her." He did not do
 2 that.
 3 Q. And when was this approximately?
 4 A. This was on the 21st.
 5 Q. On the 21st —
 6 A. Of January.
 7 Q. — of January?
 8 A. Uh-huh.
 9 Q. So on January 21st, all the paperwork
 10 from that scan was prepared at the women's center
 11 there —
 12 A. And Karen spoke to him.
 13 Q. — Karen spoke to Dr. Noak, and until
 14 this day there's been no definitive review by
 15 Dr. Noak or any other doctor?
 16 A. His chart — or her chart was on the
 17 desk with Hernandez on the evening of the 30th.
 18 Q. Okay.
 19 A. And I did not look at it. I — at
 20 that point when I found the chart, because we were
 21 looking for orders for Hernandez after he left.
 22 And I couldn't find the chart anywhere. I finally
 23 found the chart in the procedure room where he had
 24 left it with no orders, but I did not review
 25 Salenas' chart at that time.

Page 95

1 a consult to see where we're going to go from
 2 here.
 3 Q. So he has to give the authority for
 4 that?
 5 A. Definitely.
 6 Q. And what has been the time frame now?
 7 Are we talking a couple of days or weeks or months
 8 or —
 9 A. She's — she came into our facility
 10 with the initial problem.
 11 Q. Uh-huh.
 12 A. Karen identified it, started working
 13 on her immediately. I am the one who actually —
 14 Karen told me on a Thursday that she wanted this
 15 ultrasound done. She got approval from Dr. Noak
 16 to do it, which basically she had to provide
 17 documentation and previous attempts at — you
 18 know, to try to manage this before she could get
 19 approval for this scan.
 20 I set up the scan for the very next
 21 day. We got the scan the very next day. The
 22 21st, we got the results of the scan, and I was
 23 told Dr. Noak would be down that day, "Leave the
 24 chart out. He's coming down this afternoon to
 25 review the results of the scan and to come up with

Page 94

1 Q. Okay. So we have no idea whether that
 2 was acted upon or not?
 3 A. No idea.
 4 Q. Will you check that out for me when
 5 you go out there?
 6 A. Uh-huh, I will.
 7 Q. Thank you.
 8 Did you ever hear Norma on the 30th
 9 during the assessment by Dr. Noak tell Dr. Noak
 10 that he was hurting her?
 11 A. No.
 12 Q. Okay. What's the relationship between
 13 Karen Barrett and Dr. Noak?
 14 A. She is a physician assistant —
 15 Q. Right.
 16 A. — who is employed by PHS. She works
 17 one day a week at SICL, and then she works
 18 typically four days a week at South Boise. She's
 19 the primary provider for South Boise.
 20 Q. Well, when I was talking about
 21 relationship, I'm using it kind of like from the
 22 global perspective.
 23 What — how do they interact with each
 24 other?
 25 A. Well, I would say it's a strained —

Page 96

1 Q. Who does Andy work for? For us?
 2 A. Andy works for PHS.
 3 Q. Okay.
 4 A. Yeah.
 5 Q. Okay. What is Fender Salenas' status
 6 right now?
 7 A. I don't know. She is a rider at South
 8 Boise.
 9 Medical status?
 10 Q. Yes, medical status.
 11 A. At this point in time, something
 12 needs – she is one of those people that would be
 13 put into a category of needing intervention of
 14 some kind, and that's where she was at, was in
 15 that diagnostic process.
 16 Q. Is Dr. Noak seeing to that
 17 intervention?
 18 A. Karen had done the initial tests.
 19 Q. Right.
 20 A. Initiated medication therapy. The
 21 patient was not responding. She got approval for
 22 this thyroid scan, which is more definitive
 23 diagnostically. Dr. Noak at that point is the one
 24 who Karen's having – Karen's doing everything she
 25 can. Now it has to go to Dr. Noak – Noak as like

Page 93

1 a plan of care, next step for her." He did not do
 2 that.
 3 Q. And when was this approximately?
 4 A. This was on the 21st.
 5 Q. On the 21st –
 6 A. Of January.
 7 Q. – of January?
 8 A. Uh-huh.
 9 Q. So on January 21st, all the paperwork
 10 from that scan was prepared at the women's center
 11 there –
 12 A. And Karen spoke to him.
 13 Q. – Karen spoke to Dr. Noak, and until
 14 this day there's been no definitive review by
 15 Dr. Noak or any other doctor?
 16 A. His chart – or her chart was on the
 17 desk with Hernandez on the evening of the 30th.
 18 Q. Okay.
 19 A. And I did not look at it. I – at
 20 that point when I found the chart, because we were
 21 looking for orders for Hernandez after he left.
 22 And I couldn't find the chart anywhere. I finally
 23 found the chart in the procedure room where he had
 24 left it with no orders, but I did not review
 25 Salenas' chart at that time.

Page 95

1 a consult to see where we're going to go from
 2 here.
 3 Q. So he has to give the authority for
 4 that?
 5 A. Definitely.
 6 Q. And what has been the time frame now?
 7 Are we talking a couple of days or weeks or months
 8 or –
 9 A. She's – she came into our facility
 10 with the initial problem.
 11 Q. Uh-huh.
 12 A. Karen identified it, started working
 13 on her immediately. I am the one who actually –
 14 Karen told me on a Thursday that she wanted this
 15 ultrasound done. She got approval from Dr. Noak
 16 to do it, which basically she had to provide
 17 documentation and previous attempts at – you
 18 know, to try to manage this before she could get
 19 approval for this scan.
 20 I set up the scan for the very next
 21 day. We got the scan the very next day. The
 22 21st, we got the results of the scan, and I was
 23 told Dr. Noak would be down that day, "Leave the
 24 chart out. He's coming down this afternoon to
 25 review the results of the scan and to come up with

Page 94

1 Q. Okay. So we have no idea whether that
 2 was acted upon or not?
 3 A. No idea.
 4 Q. Will you check that out for me when
 5 you go out there?
 6 A. Uh-huh, I will.
 7 Q. Thank you.
 8 Did you ever hear Norma on the 30th
 9 during the assessment by Dr. Noak tell Dr. Noak
 10 that he was hurting her?
 11 A. No.
 12 Q. Okay. What's the relationship between
 13 Karen Barrett and Dr. Noak?
 14 A. She is a physician assistant –
 15 Q. Right.
 16 A. – who is employed by PHS. She works
 17 one day a week at SICL, and then she works
 18 typically four days a week at South Boise. She's
 19 the primary provider for South Boise.
 20 Q. Well, when I was talking about
 21 relationship, I'm using it kind of like from the
 22 global perspective.
 23 What – how do they interact with each
 24 other?
 25 A. Well, I would say it's a strained –

Page 96

1 from my experiences on my end, which is Karen sees
2 patients, I get orders, I document the orders, I
3 follow up on everything she wants for that
4 patient. I know there has been great strain
5 between Dr. Noak and Karen with regard to the
6 patient.

7 Q. Has Karen ever said anything specific
8 to you in regards to an interaction that she has
9 had with Dr. Noak?

10 A. Most of our conversations, Karen's and
11 my conversations, have to do with the patient
12 care. She's trying to get things done for the
13 patient. She has many times expressed frustration
14 about not being able to get that accomplished for
15 that.

16 And I have noticed, because I work
17 both places, that there is a definite difference
18 in the way he interacts with Karen versus Tom,
19 who's the primary provider at SICL.

20 Q. Okay. Did you ever hear Norma say to
21 Dr. Noak, "My ears are ringing"?

22 A. I can't say that I did.

23 Q. Did you ever hear Dr. Noak respond to
24 her, no matter what the question was,
25 "Ms. Hernandez, my ears are ringing -- my ears

Page 97

1 the facility?

2 A. No. It was absolutely contradictory
3 to the medical condition of the patient.

4 Q. Okay.

5 A. A person in her condition would never
6 be ambulated and should not have been. At that
7 point in time the patient should be stabilized,
8 assisted to sit down, and probably get her feet
9 up, as opposed to walking down the hall.

10 Q. And on a follow-up question to that,
11 had this been a situation with a correctional
12 officer --

13 A. Uh-huh.

14 Q. -- take Dr. Noak out of the picture
15 and utilize a correctional officer in his place,
16 would this have been considered necessary force in
17 order to quell a situation in which an offender
18 was doing something wrong?

19 A. No.

20 Q. I mean do you understand the question?

21 A. I do.

22 Q. Okay.

23 A. No. I've never ever in any situation
24 seen even an officer escort an inmate like this,
25 even in a situation where it was a security issue.

Page 99

1 have been ringing for two weeks listening to
2 stupid complaints from inmates like you"?

3 A. No, I didn't hear that.

4 Q. Okay.

5 A. I -- go ahead.

6 Q. Have you ever heard of anybody by the
7 name of Vicki Weremecki?

8 A. Yes.

9 Q. Okay. And where does she work?

10 A. SICL.

11 Q. Okay. Do you know what, if anything,
12 she could tell us about anything going on out
13 there?

14 A. She's -- on a day-to-day basis, she is
15 up there full time.

16 Q. Is she somebody that would be worthy
17 of me speaking with in regards to knowledge to
18 behavior of medical staff?

19 A. Uh-huh.

20 Q. Okay.

21 A. She's a very diligent, very caring
22 individual who does a good job with the patients.

23 Q. Was the escort that Dr. Noak used on
24 Norma on the 30th necessary for the purposes of
25 medical treatment or for the safety or security of

Page 98

1 Q. Did you feel that the amount of force
2 that was used was necessary?

3 A. No.

4 Q. Okay. Did Dr. Noak ever apologize to
5 you for pushing you or talk to you about the
6 incident?

7 A. No.

8 Q. Okay.

9 A. No, it was never even acknowledged
10 that anything occurred.

11 Q. What was the patient's name with the
12 bowel obstruction?

13 A. Carla Bengier, B-e-n-g-e-r.

14 Q. B-e-n-g-e-r?

15 A. Uh-huh.

16 Q. Okay. And you had said -- oh, I'm
17 going to go back to this other question.

18 You had indicated earlier that Norma,
19 when she was getting the assessment, looked like
20 she was scared to death. When I go to the dentist
21 I look like that.

22 A. Uh-huh.

23 Q. Okay? What was she afraid of, aside
24 from the normal fear that you have from getting a
25 medical assessment or going to the dentist?

Page 100

25 (Pages 97 to 100)

1 A. I guess I just -- based on the fact
2 that I just spent the last day and a half with
3 her, and a lot of that right at her side --
4 Q. Right.
5 A. -- like in the ER --
6 Q. Uh-huh.
7 A. -- her level of relaxation, like the
8 way she looked, her comfort level, in general,
9 body language tells you a lot.
10 Q. Right.
11 A. She was very tense. She was -- her
12 face looked stressed in the room. She did not
13 have -- she was comfortable with me. She was
14 comfortable with the ER physician. You know, her
15 body language, her arms were out. She was drawn
16 up. She -- just her general level of comfort was
17 totally different than it had been previous during
18 my interactions with her.
19 Q. What do you attribute that to?
20 A. Well, you're asking an opinion, so I'm
21 going to give it.
22 Q. Yes.
23 A. Which I believe it's Dr. Noak, his
24 presence, his -- his inability to communicate to
25 make somebody feel comfortable, elicit

Page 101

1 or an area out of their expertise, they
2 communicate with other physicians in that area of
3 expertise.
4 Dr. Noak does not do that. Never have
5 I seen him communicate. I feel he has a lot of
6 preconceived ideas. I feel that his general
7 opinion of an incarcerated individual skews his
8 medical judgment and treatment overall.
9 Q. Would you say that -- and I don't want
10 to put words in your mouth, but just for
11 clarification, would you say that he has some kind
12 of issue with inmates?
13 A. I would say he just has no respect for
14 them as human beings. He doesn't even look at
15 them as human beings.
16 Q. And what would you -- how are you
17 basing that opinion?
18 A. On his interaction, and then the
19 verbalizations that I've been witness to.
20 Q. In fact, you -- you said that he
21 refers to some of them as "dirtbags"; is that
22 correct?
23 A. Uh-huh.
24 Q. And one occasion you heard him use a
25 word "fat fuck" to one of the inmates?

Page 103

1 information, you know, from his patient, being
2 judged, that she might get in trouble.
3 Q. Is this contrary to what you would
4 expect when seeing a doctor in a doctor-patient
5 relationship?
6 A. Uh-huh.
7 Q. You have to say "yes" or "no" for the
8 purposes of the tape.
9 A. Yes.
10 Q. Okay. Okay. And last question -- and
11 I don't know if the detective will have any
12 follow-up, but in your opinion, what would you say
13 Dr. Noak's competency level is? Do you feel he's
14 competent to practice medicine under these
15 conditions, meaning in a facility?
16 A. I think Dr. Noak -- I don't have a lot
17 of experience on a daily basis with Dr. Noak,
18 seeing him, you know, diagnose and things.
19 I think Dr. Noak probably has adequate
20 knowledge base to be a physician, yes. But the
21 thing that I see -- I see a couple things that
22 concern me and that I've noticed over time. Most
23 every physician, no matter what -- I've worked
24 with the cream of the crop -- they have a network.
25 You know, when they have a problem in another area

Page 102

1 A. That was directly with me. I had done
2 his clinic that morning, and he had -- there was
3 four people to be seen. At eleven o'clock all
4 four of those individuals showed up at medical
5 like they were supposed to for their appointment.
6 At 11:45 he was still not there and
7 had not called. I sent them back to their units
8 and said I would page them when he was physically
9 in the facility.
10 Q. Right.
11 A. I did that. One of those individuals
12 has been very ill, Mr. Kersling (phonetic) is his
13 name. He has gained -- he weighs over 400 pounds.
14 It's quite a walk from where he lives up to where
15 medical is.
16 He also has a problem right now with
17 uric acid, so his feet -- it's like walking on
18 glass shards.
19 Q. Right.
20 A. So he's -- it's all he can do to get
21 up to medical and get back, you know, let alone do
22 that ten times a day.
23 So when Dr. Noak showed up -- I think
24 he started his clinic at 12:00 or 12:15 that
25 day -- I called the individuals back up to

Page 104

<p>1 medical. And I had paged Mr. Kersling twice. 2 Knowing that he might have gone back to his unit 3 and laid down and didn't hear it, I called the 4 unit. They sent him up. 5 So he was -- Dr. Noak had finished 6 with his patient and Mr. Kersling was enroute 7 coming to medical, and Dr. Noak was standing at -- 8 kind of beside my desk. And I was charting. And 9 he said, "Am I finished?" 10 And I said, "Well, Mr. Kersling's on 11 his way. He should be here any minute." 12 Well, there was like four or five 13 inmates sitting out in a waiting area, which a 14 divider sits. And so they can hear everything. 15 His back is just -- you know, here's the divider, 16 here's Dr. Noak, here's the inmates, and the door 17 is over here to the medical unit. 18 So he's tapping his pen, going, "Huh, 19 Kersling? What's wrong with him?" 20 And at that point the door opens. 21 Okay? He's like, "Oh, I know. That's that fat 22 fuck." And then he says -- goes into this "Fat 23 fuck, fat fuck, fat fuck." And he goes, "You know 24 South Park. Haven't you ever heard of South 25 Park?"</p> <p style="text-align: right;">Page 105</p>	<p>1 Q. On whose part? 2 A. On Dr. Noak's and on mine for not 3 reporting it. 4 Q. Okay. That's all I have. 5 A. And I did report that particular 6 incident to my boss. 7 Q. Okay. 8 A. And to be honest with you, he's been 9 allowing me to take better care of the patients 10 since the incident with Benger. And I said, "Give 11 me a little while, and I'll decide how I want to 12 deal with this." 13 That's why I'm here today, too, is I'm 14 starting to have a real problem with me. 15 Q. Well, you can clearly see that we're 16 taking this pretty seriously. 17 A. And I'm thankful. 18 MR. WOLFE: Okay. 19 20 FURTHER EXAMINATION 21 BY MR. LAKASKEY: 22 Q. Just to wrap this up. When Steve 23 asked you if you heard the statement, you know, 24 about ringing -- his ears ringing with all the 25 complaints of the inmates, you seemed kind of</p> <p style="text-align: right;">Page 107</p>
<p>1 And I looked up at him and I am 2 like -- I just had my teeth gritted. And I said, 3 "He's here. Do you want me to check him in?" 4 And I just was horrified. I felt 5 terrible. I didn't know whether Mr. Kersling had 6 heard it, because he's talked -- Mr. Kersling has 7 talked to me about his weight and how he feels 8 about this. And we don't know what's going on 9 with him. It's endocrine or something. 10 Q. What I've set before you is a card 11 with the Idaho Department of Corrections mission, 12 vision, and values on the back of it. 13 Have you ever seen that before? 14 A. I have. We have it posted in medical. 15 Q. Okay. Have you ever actually read it? 16 A. Uh-huh. 17 Q. Okay. Would you say that -- if you 18 look at some of the values, it says, "We respect 19 and appreciate each other's roles and 20 contributions. We foster dignity and respect for 21 staff, offenders, and the public." 22 Would you say that there's any 23 violations in regards to our mission, vision, and 24 values? 25 A. I'd say there's huge violations.</p> <p style="text-align: right;">Page 106</p>	<p>1 surprised. 2 A. That sounds exactly like something 3 he'd say. 4 Q. Okay. All right. 5 A. That's always -- it sounds kind of 6 stupid, but I mean I -- it hurts me to hear. And 7 I try to comfort them or to take away some of that 8 sting, you know, because they have to put that 9 somewhere. 10 Q. Uh-huh. Has Dr. Noak ever seen Norma, 11 that you can recall? 12 A. Huh-uh. 13 Q. So when she -- 14 A. No, Dr. Noak rarely ever, ever, is 15 down at South Boise. Rare. I can probably tell 16 you three times in the last year. 17 Q. All right. Now, the injuries to you, 18 did you have any physical -- did you have any 19 physical? 20 A. I have a couple more things, too, 21 though, I want to tell you. 22 Go ahead. 23 Q. Did you have any injuries when he 24 shoved you out of the way, any physical injuries 25 on you?</p> <p style="text-align: right;">Page 108</p>

1 A. No.
 2 Q. Did you feel anything?
 3 A. No.
 4 Q. Was it just like a shove and –
 5 A. You know, to be really honest, I never
 6 thought about me until two minutes later.
 7 Q. Okay.
 8 A. I mean –
 9 Q. Why?
 10 A. Because I was more focused on the
 11 patient.
 12 Q. Did you –
 13 A. I never even thought about the fact.
 14 It was kind of like, He pushed me. When I wrote
 15 my statement, I was at work in Payette, and I was
 16 writing the statement, and it donned on me that he
 17 had shoved me.
 18 Q. Did you ever think about filing
 19 charges against him?
 20 A. Uh-huh, yeah.
 21 Q. Okay.
 22 A. And that's why I sort of on Monday of
 23 this week after I had the meeting with that
 24 Rick –
 25 Q. Uh-huh.

Page 109

1 and filing charges against him, do you feel that
 2 your job is in jeopardy or your reputation in the
 3 medical field? Do you think there's going to be
 4 any repercussions for doing this?
 5 A. There might be. Not from anybody I
 6 work directly with. My medical, all of my – I'm
 7 diligent in my care and my documentation. And I
 8 think as far as officers, as far as the patients
 9 themselves –
 10 Q. Uh-huh.
 11 A. – and as far as my reputation in the
 12 medical community from Saint Alphonsus clear to
 13 Ontario, Oregon, can't be disputed. I've never
 14 been sued. I take care of – so I don't have any
 15 concern about – you know, that's on me as far as
 16 my medical abilities and reputation.
 17 Q. So the network that he has with all
 18 the other physicians, you don't think that in some
 19 way that will –
 20 A. No, I pretty much – I pretty much
 21 have the respect of anybody who knows me with
 22 regard to medicine and integrity and dignity and
 23 most of the things that I believe. Most of the
 24 things that I would stand up for are legitimate
 25 and mostly probably ethically based.

Page 111

1 A. – I called and tried to find – I
 2 found out that Detective Jensen (phonetic) was off
 3 until Saturday, and – because at that point I was
 4 going to go ahead and –
 5 Q. And that's –
 6 A. I feel like that's my obligation.
 7 Norma is the one that was truly violated. But I
 8 feel like I also have to stand up. And I know
 9 mine seems trivial or minimal to me, but it's the
 10 principle. And it's the fact that he invaded my
 11 personal space and pushed me.
 12 Q. Right. And, you know, that's one
 13 reason – usually detectives won't get these kinds
 14 of cases, but because he had, you know, five days
 15 off –
 16 A. Right.
 17 Q. – and we thought, Let's get it to the
 18 detective and get the ball rolling on this, and
 19 that's why I have that case.
 20 A. Right.
 21 Q. Let's see. The other question I had
 22 is, you know, Karen – you said that she works
 23 directly for Dr. Noak?
 24 A. Well, he has more control over her.
 25 Q. Okay. Do you recall by coming forward

Page 110

1 Q. Okay.
 2 A. I do – PHS, certainly. Rick Dole, I
 3 already know that I might – I probably will.
 4 It's as easy as not calling me anymore. Do you
 5 know what I mean? It's a right-to-work state.
 6 Q. All right. Okay.
 7 A. So he doesn't even have to fire me.
 8 He can just give a directive not to call me
 9 anymore to cover shifts. And I've worked almost
 10 full time since I've started out there, and that's
 11 how much they needed coverage.
 12 Q. So there's not a schedule that you go
 13 by?
 14 A. Huh-uh.
 15 Q. It's whenever they need you, they'll
 16 give you a call and say, "Hey, can you fill this?"
 17 A. Uh-huh. I worked pretty much directly
 18 with the DON, the director of nursing, and
 19 she's – well each one that we've had – we've had
 20 two different ones. They work with me and say,
 21 "What's your schedule this month?"
 22 Q. Okay.
 23 A. And "This is what I need this month."
 24 And I even rearrange my schedule on
 25 the ambulance if I can, you know, to cover shifts

Page 112

<p>1 out there. We've been going through some changes 2 and new hiring. And I know I can pretty much 3 function in any environment. So, you know, with 4 regard to that, it's like -- it works really well 5 for me because I can pick and choose. But it 6 works really well for them too.</p> <p>7 Q. Uh-huh.</p> <p>8 A. But I feel a great sense of -- I like 9 it. Believe it or not, I like it better than 10 being like in urgent care. You know, I feel like 11 it's -- I learn a lot from the pathology and...</p> <p>12 MR. WOLFE: Are we done recording?</p> <p>13 MR. LAKASKEY: Yeah, I'm done, so I'm going 14 to go ahead --</p> <p>15 THE WITNESS: There's a couple more things 16 that I just wanted to tell you that I --</p> <p>17 MR. WOLFE: On the record or off the 18 record?</p> <p>19 THE WITNESS: Probably should be on the 20 record. They're pretty bad. These are mostly 21 with regards to his actions, things that he's 22 done. I'm compiling a list, because like I said, 23 Rick Dole said bring these issues to him.</p> <p>24 But, you know, I really feel like 25 since this is a conduct issue that you're</p> <p style="text-align: right;">Page 113</p>	<p>1 if they have a true peanut allergy.</p> <p>2 But their whole thing -- this happened 3 to me on my shift with an inmate and an onion. 4 And I walked into the P.A.'s office, and I saw on 5 the call-out, the schedule, it said "onion 6 allergy." So I noticed on the P.A.'s desk there 7 was an onion about this big, and then epinephrine 8 and Benadryl.</p> <p>9 And I said what are you -- what are 10 you -- I knew -- I'm thinking, You're not going 11 to -- are you really going to do that? I thought 12 it was a joke or something.</p> <p>13 And he's like, "No."</p> <p>14 And I thought, Oh, my God. Are you 15 kidding me? We can't intubate. This is wrong. 16 And so I told that --</p> <p>17 Q. I take it this is not 18 generally-accepted medical practice?</p> <p>19 A. No. No. No. This is -- and I 20 addressed this with Rick Dole. He said that was 21 the standard of care, and we've since changed 22 that. And see I griped. I threw a huge stink 23 about that, because I've had people die by the 24 time I got to them when they were in anaphylaxis. 25 I couldn't get them intubated. I couldn't cut</p> <p style="text-align: right;">Page 115</p>
<p>1 representing -- there's a couple of things that 2 border abuse. They are abuse. They don't border 3 abuse.</p> <p>4 It has to do with -- number one, I 5 expressed this to Rick. But basically when an 6 inmate comes and expresses the fact that like 7 they're allergic to peanuts and they want a peanut 8 memo, usually not to eat peanut butter or whatever 9 they're allergic to.</p> <p>10 What they do is they bring them -- 11 they set them up for an appointment with the P.A. 12 and have peanut butter or peanuts or whatever 13 sitting on the table, along with Benadryl and 14 epinephrine. And they have to eat the peanuts and 15 go into an anaphylactic reaction.</p> <p>16</p> <p>17 FURTHER EXAMINATION</p> <p>18 BY MR. WOLFE:</p> <p>19 Q. Who does this?</p> <p>20 A. The physician.</p> <p>21 Q. Which physician?</p> <p>22 A. Well, it comes from Dr. Noak. He 23 makes the P.A.s do it. Karen won't do it. She'll 24 do a serum blood test. There is a test that you 25 can draw blood from this individual and find out</p> <p style="text-align: right;">Page 114</p>	<p>1 their throat open quick enough. They die.</p> <p>2 "Oh, we just give them a little bit."</p> <p>3 I said, "You don't even understand. 4 Peanut oil on their fingertips will send them into 5 anaphylaxis and they can die within minutes."</p> <p>6 Q. Is Rick Dole a doctor?</p> <p>7 A. No.</p> <p>8 Q. Okay.</p> <p>9 A. Okay. Then the other issue is this 10 faking issue. There was a big stink about people 11 faking seizures.</p> <p>12 Well, there's a couple ways to assess 13 that, one of which is not to break an ammonia 14 inhalant and shove it in their nose.</p> <p>15 The whole goal of an ammonia inhalant 16 is to snap it, and it's a noxious stimuli. You 17 wave it.</p> <p>18 Well, Dr. Noak shoves them in their 19 nares, which then causes acid burns to their 20 nares. And if I was ever to do that in the field, 21 I would be fired and sued.</p> <p>22 But these are the kind of things that 23 go on that are so appalling to me. And I stood my 24 ground on a lot of this stuff verbally, you know, 25 confronted the issue. So of course, you know, I'm</p> <p style="text-align: right;">Page 116</p>

1 the bad guy for trying – you know, trying to be
 2 the saint here or something.
 3 But there's just a lot of issues. He
 4 will degrade – I wrote just – and see, I'm just
 5 starting to comprise this list of dates, because I
 6 can go back and do all that.
 7 Q. Okay.
 8 A. But eating the diabetic snacks. We
 9 get snacks from the kitchen for the diabetics.
 10 Dr. Noak goes and eats them. So then we don't
 11 have them for our diabetics.
 12 The informed consent thing. You know,
 13 normal people, when you go to a physician and
 14 you're going to have a procedure done or
 15 something, you know, your doctor explains the
 16 procedure and makes sure you understand and "Do
 17 you want to do this?" or whatever.
 18 Well, basically they're told they have
 19 to or they're going to be sent back to wherever.
 20 You know, he gives a lot of threats.
 21 The other inmate was at South Boise
 22 that I told you about, the airway gal. I dealt
 23 with her so many times I can't even tell you,
 24 breathing to the point of where exhaustion. And
 25 what he did with her is he provided a medication

Page 117

1 Advair, which is nothing. It's nonformulary, yes,
 2 but she was a premie baby, and she's got some
 3 damage to her lungs. She was the one who was
 4 about ready to be released. She was actually
 5 going out in the community and looking for
 6 placement.
 7 Q. Right.
 8 A. Well, he approved this medication.
 9 She had been in an acute situation for months. He
 10 went ahead and approved the Advair. She had
 11 nothing during the three months she was on Advair.
 12 No exacerbation of her asthma, nothing. She was
 13 functional. She was working.
 14 He just decided to when the 90 days
 15 was up, he disapproved it. And immediately she
 16 was back on Prednisone. She was doing nebulizer
 17 treatments constantly. You know, Prednisone
 18 changes your whole – the way you feel, in
 19 general.
 20 Q. Right.
 21 A. She gained like a ton of weight. And
 22 all this time Karen kept submitting, you know,
 23 requests to put her back on Advair, because with
 24 asthma you have a reactive component. And so
 25 these other medications, his whole thing was,

Page 118

1 "Well, it's the same thing that's in these two."
 2 But the fillers – you can have reactions. It was
 3 obvious, it was documented, she had nothing on
 4 Advair. She was functional. So she ended up
 5 getting sent back to Pocatello.
 6 And those are the kinds of things he
 7 does. It's almost out of spite, you know. It's
 8 to spite – you know, in that case I felt it was
 9 to spite Karen.
 10 Q. Uh-huh.
 11 A. And then I found out later, because I
 12 threw a stink about it, and I went to the
 13 lieutenant and I said, "You cannot let them send
 14 her back to Pocatello. She doesn't deserve it.
 15 You're messing with her life."
 16 She had it investigated by David Haas
 17 (phonetic).
 18 Does that sound right?
 19 Q. David Haas is the contract
 20 administrator for the Department of Corrections.
 21 A. Okay.
 22 Q. And he and I are very closely aligned
 23 on this issue. His office is right next to mine.
 24 And he's the one that brought this investigation
 25 to me in the first place.

Page 119

1 A. Okay. Well, I just want to tell you
 2 this, because what happened is – and I'm not even
 3 supposed to know this, but because I threw such a
 4 stink about Ms. Nerse (phonetic), this gal who got
 5 sent back to Pocatello, Karen got dinged on it in
 6 her evaluation, that she tells me too much.
 7 Well, I'm not stupid. I read the
 8 chart. I can follow her plan of care. I provide
 9 care in the field for this type of problem. And
 10 she ends up suffering for it on her evaluation.
 11 Not right.
 12 He approves nonformulary drugs for Tom
 13 for 90 days at a time. Karen gets 30 days.
 14 There's just so many –
 15 Q. Is Tom another P.A. out there?
 16 A. He's out at SICL.
 17 Q. Okay.
 18 A. And I see this. It's like – Karen
 19 doesn't talk to – we're professionals. She's
 20 professional with me. Certainly we gripe. I'm
 21 not going to lie to you. It's frustrating when
 22 you can't take care of your patients. But we
 23 still – you know, she still goes through the
 24 channels. So do I.
 25 Q. Would a lot change around there if you

Page 120

1 had a different doctor?

2 A. I would hope -- I guess if in fact the
3 doctor was there for the right reasons, which is
4 to care for the patients. To be honest, all I
5 ever see is Dr. Noak walking around tooting his
6 own horn and letting us all know how in control
7 and in charge he is.

8 He doesn't educate. You know, you ask
9 him a question -- and I do this constantly because
10 I'm used to being around physicians who share and
11 want people around them to grow and learn. And
12 I -- you ask him a question, and he criticizes or
13 minimizes or walks away from you. He doesn't
14 teach his P.A.'s anything.

15 It's more he'll -- for a perfect
16 example, Tom -- and I witnessed this myself, and
17 that's when I said something to him about the way
18 he treats -- I did say something to him that
19 particular day. They had a dual appointment where
20 they were going to remove a cyst on this fellow's
21 forehead.

22 Well, the patient came in. He was
23 sitting on the table, everything was ready. Tom
24 came out, and Dr. Noak was sitting at a desk
25 reading a fishing magazine right there in front of

Page 121

1 the patient and says to Tom, "Wow, obviously" --
2 and he just walks over to the inmate and grabs
3 this cyst on his head and starts moving it around,
4 like really rough, and says, "Obviously, you don't
5 know the difference between a lipoma and a cyst.
6 Well, the way I see it, you're going to have to go
7 back and educate yourself before we can do this.
8 So we're going to cancel this patient because
9 you're so" -- basically, he said "incompetent," is
10 what he said. "You're incompetent so we're going
11 to reschedule him for another day once you educate
12 yourself better." And the guy had to leave.

13 Q. So the patient didn't get the care?

14 A. No, huh-uh. They rescheduled the
15 excision of -- lipoma means a fatty cyst. Cyst is
16 just a cyst. It may be calculi, you know,
17 something more. Those are the kind of things that
18 happen on a regular basis.

19 Q. And why is it that we haven't heard
20 any of this stuff until now?

21 A. And see, I was under the understanding
22 that Lisa Mays, who was the ON -- or the HSA prior
23 to Sharron. This was a PHS thing.

24 Q. Okay.

25 A. I was under the understanding that

Page 122

1 Lisa Mays was writing Dr. Noak up right and left
2 when Lee Harrington (phonetic) was there at PHS.
3 Lee Harrington was gone. Rick Dole took over.

4 So I'm assuming -- all I can say is
5 I'm assuming that it never left PHS, where see I
6 think we're all under -- I was even under the
7 understanding that, you know, we keep --
8 everybody's made these complaints, but it's going
9 nowhere. So it's worthless. It's like he does
10 have the power.

11 Q. Well, the Department of Correction has
12 not heard from any of our staff members that this
13 stuff is going on, that I know of.

14 A. Lieutenant Presley (phonetic) was the
15 first one who ever sort of informed me that there
16 was another route. I assumed that was -- that's
17 why I went to her, because I knew she could go
18 another route.

19 You know, I worked for a contracted
20 company. I didn't really realize that there was
21 that separation or that IDOC had really a whole
22 lot to do with any of what went on with us. And I
23 mean I really -- I understand and communicate -- I
24 think I have a real good working relationship with
25 all the officers and everything, and I do --

Page 123

1 they've helped me immensely with regard to
2 communicating with, you know, the inmates and the
3 mentality, you know, and the gangs. And I can go
4 to them and say, "What do you think?"

5 But we're a team, you know, is the way
6 I look at it. I just never thought about it with
7 regard to medicine, or that I could pursue it
8 another way.

9 Q. I guess kind of my final issue is
10 this: What caused you to want to come talk to us?

11 A. Well, I think -- today?

12 Q. Yeah.

13 A. The meeting on Monday. I -- on Monday
14 I expected something totally different, you know,
15 when I had requested -- when he requested that
16 meeting, I thought he really was going to listen.
17 He came in with his own agenda. And --

18 Q. You mean Rick Dole?

19 A. Yeah. That was so apparent to me.
20 And to try to keep redirecting me and, you know,
21 he defended Dr. Noak to pretty much -- or made
22 excuses for him.

23 Q. Are you fearful of your job?

24 A. Yeah.

25 Q. Why?

Page 124

1 A. But it's worth it.
2 Q. Why are you fearful for your job?
3 A. Well, like I was telling the
4 detective, I'm the type of an employee that
5 basically they just don't have to call anymore.
6 I'm p.r.n. They call me when they need me. And I
7 like my job. I really do. My relationships –
8 you know, I think it's an important job, probably
9 more so than working at the urgent care I did work
10 at or Idaho Nephrology. You know, these people –
11 Q. Right.
12 A. – I really feel like I can – I'm the
13 type that likes to sit down and talk to them and
14 educate them. And it's stimulating for me to look
15 at their lives, you know.
16 So I – there's a very definite
17 possibility that I won't be out there anymore. If
18 that happens, I'll deal with that, because, in my
19 opinion, it's retaliation.
20 Q. Okay. Are you a contract employee for
21 them, or are you actually an employee?
22 A. I'm an employee.
23 Q. Okay. So you work for them full time?
24 A. No.
25 Q. Well, part-time?

Page 125

1 A. On an as-needed basis, which is –
2 could be over 40 hours a week, really.
3 Q. Okay.
4 A. Since I've started out there, I've
5 averaged, the majority of the time, I'd have to
6 say between 36 and 40 hours, for the most part.
7 Q. Okay. Is there anything that either
8 the detective or myself haven't asked you that you
9 think is important to kind of close out this
10 interview?
11 A. I've probably already said more than I
12 needed to, but it's time to get it all on the
13 table and...
14 Q. Okay. Have you given the statement of
15 your own free will?
16 A. Yes, I have.
17 Q. Has anybody forced you in any way to
18 come in and talk with us?
19 A. No.
20 Q. Are you willing to testify to these
21 facts in a court of law or some type of
22 administrative proceeding?
23 A. Yes.
24 Q. Okay. Did all this happen in Ada
25 County?

Page 126

1 A. Yes.
2 Q. Idaho?
3 A. Yes.
4 MR. WOLFE: Okay. Any other questions,
5 Detective?
6 MR. LAKASKEY: No, I am done.
7 MR. WOLFE: This concludes the interview of
8 Janna Beth Nicholson on February 12th, 2004, at
9 approximately 11:45 a.m.
10 (Interview concluded.)
11 -oOo-
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 127

1 REPORTER'S CERTIFICATE
2
3 STATE OF IDAHO)
4) ss.
5 COUNTY OF ADA)
6 I, JEFF LaMAR, Certified Shorthand Reporter
7 and Notary Public in and for the State of Idaho,
8 do hereby certify:
9 That I transcribed the foregoing audiotaped
10 interview to the best of my ability;
11 I further certify that I have no interest
12 in the event of the action.
13 WITNESS my hand and seal this 29th day of
14 July, 2009.
15 _____
16 Jeff LaMar
17 CSR and Notary Public in
18 and for the State of Idaho.
19 My Commission Expires: December 30, 2011
20
21
22
23
24
25

Page 128

1 the bad guy for trying – you know, trying to be
2 the saint here or something.

3 But there's just a lot of issues. He
4 will degrade – I wrote just – and see, I'm just
5 starting to comprise this list of dates, because I
6 can go back and do all that.

7 Q. Okay.

8 A. But eating the diabetic snacks. We
9 get snacks from the kitchen for the diabetics.
10 Dr. Noak goes and eats them. So then we don't
11 have them for our diabetics.

12 The informed consent thing. You know,
13 normal people, when you go to a physician and
14 you're going to have a procedure done or
15 something, you know, your doctor explains the
16 procedure and makes sure you understand and "Do
17 you want to do this?" or whatever.

18 Well, basically they're told they have
19 to or they're going to be sent back to wherever.
20 You know, he gives a lot of threats.

21 The other inmate was at South Boise
22 that I told you about, the airway gal. I dealt
23 with her so many times I can't even tell you,
24 breathing to the point of where exhaustion. And
25 what he did with her is he provided a medication

Page 117

Advail, which is nothing. It's nonformulary, yes,
but she was a premie baby, and she's got some
damage to her lungs. She was the one who was
about ready to be released. She was actually
going out in the community and looking for
placement.

Q. Right.

A. Well, he approved this medication.
She had been in an acute situation for months. He
went ahead and approved the Advair. She had
nothing during the three months she was on Advair.
No exacerbation of her asthma, nothing. She was
functional. She was working.

He just decided to when the 90 days
was up, he disapproved it. And immediately she
was back on Prednisone. She was doing nebulizer
treatments constantly. You know, Prednisone
changes your whole – the way you feel, in
general.

Q. Right.

A. She gained like a ton of weight. And
all this time Karen kept submitting, you know,
requests to put her back on Advair, because with
asthma you have a reactive component. And so
these other medications, his whole thing was,

Page 118

1 "Well, it's the same thing that's in these two."

2 But the fillers – you can have reactions. It was
3 obvious, it was documented, she had nothing on
4 Advair. She was functional. So she ended up
5 getting sent back to Pocatello.

6 And those are the kinds of things he
7 does. It's almost out of spite, you know. It's
8 to spite – you know, in that case I felt it was
9 to spite Karen.

10 Q. Uh-huh.

11 A. And then I found out later, because I
12 threw a stink about it, and I went to the
13 lieutenant and I said, "You cannot let them send
14 her back to Pocatello. She doesn't deserve it.
15 You're messing with her life."

16 She had it investigated by David Haas
17 (phonetic).

18 Does that sound right?

19 Q. David Haas is the contract
20 administrator for the Department of Corrections.

21 A. Okay.

22 Q. And he and I are very closely aligned
23 on this issue. His office is right next to mine.
24 And he's the one that brought this investigation
25 to me in the first place.

Page 119

1 A. Okay. Well, I just want to tell you
2 this, because what happened is – and I'm not even
3 supposed to know this, but because I threw such a
4 stink about Ms. Nerse (phonetic), this gal who got
5 sent back to Pocatello, Karen got dinged on it in
6 her evaluation, that she tells me too much.

7 Well, I'm not stupid. I read the
8 chart. I can follow her plan of care. I provide
9 care in the field for this type of problem. And
10 she ends up suffering for it on her evaluation.
11 Not right.

12 He approves nonformulary drugs for Tom
13 for 90 days at a time. Karen gets 30 days.
14 There's just so many –

15 Q. Is Tom another P.A. out there?

16 A. He's out at SICL.

17 Q. Okay.

18 A. And I see this. It's like – Karen
19 doesn't talk to – we're professionals. She's
20 professional with me. Certainly we gripe. I'm
21 not going to lie to you. It's frustrating when
22 you can't take care of your patients. But we
23 still – you know, she still goes through the
24 channels. So do I.

25 Q. Would a lot change around there if you

Page 120

(Pages 117 to 120)

REPORTER'S CERTIFICATE

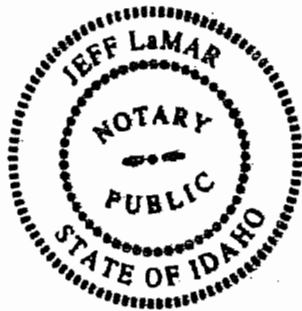
STATE OF IDAHO)
) ss.
COUNTY OF ADA)

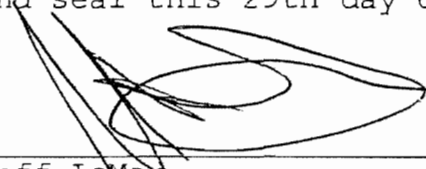
I, JEFF LaMAR, Certified Shorthand Reporter
and Notary Public in and for the State of Idaho,
do hereby certify:

That I transcribed the foregoing audiotaped
interview to the best of my ability;

I further certify that I have no interest
in the event of the action.

WITNESS my hand and seal this 29th day of
July, 2009.





Jeff LaMar
CSR and Notary Public in
and for the State of Idaho.

My Commission Expires: December 30, 2011

Re:

Noak v. Prison Health Care Services, Inc.

TRANSCRIPTION OF AUDIOTAPED

INTERVIEW OF KAREN BARRETT

FEBRUARY 11, 2004

Reported By:

JEFF LAMAR, C.S.R. No. 640

ORIGINAL



1618 W. Jefferson ▼ Boise Idaho ▼ 83702
(800) 588-3370 ▼ (208) 343-4004 ▼ (208) 343-4002 Fax

000639

1 EXAMINATION

2 BY MR. LAKASKEY:

3 Q. Norma went ahead and filed a report
4 through, I guess, Lieutenant --

5 A. Hernandez, Norma Hernandez.

6 Q. Right.

7 A. Okay.

8 Q. And that's why I'm here to gather
9 evidence to present that to the prosecutor to see
10 if any charges should be against Dr. Noak. And we
11 just got done talking to Norma, and I've read your
12 statement that you had completed and also Janna's.
13 And I was wondering if you can kind of elaborate
14 or talk about what happened on the 30th of
15 January, I believe this happened; is that correct?

16 A. Right.

17 Q. Can you tell me about that?

18 A. Ms. Hernandez had been having some
19 medical problems. She had been taken down to
20 Saint Al's for some tests suspicious of kidney
21 stone.22 Initially, I thought she had a bladder
23 infection, but she was passing hematuria. So --
24 and this was like on a Friday. And so at that
25 point from, what I recollect, Janna had called

1 Dr. Noak for some follow-up stuff, advice. And he
2 recommended she go ahead and go down. She had
3 some tests done. They brought her back without a
4 definitive diagnosis. They couldn't figure out
5 what was going on. But she was still feeling
6 pretty badly.

7 So she -- and I had requested -- and
8 Janna too that Dr. Noak come and check her out.

9 Q. When did you make that request to him?

10 A. Boy, I'd have to -- it was several
11 days -- he was going to come down and then he
12 didn't, and I think Janna -- it's in the chart,
13 the exact date.

14 At any rate, he did show up on the
15 30th.

16 Q. Okay.

17 A. And I had kind of briefed him, gave
18 him the chart, and then he asked for the patient
19 to come down. And I think I had saw her for a
20 follow-up prior to just that day too. I'd have to
21 make sure and look in the chart.

22 And so I went down and got her and
23 brought her to the exam room. I stayed there
24 briefly while he did his physical assessment, and
25 then pretty much towards the end Janna came out of

1 the office. And I had some other charting I had
2 to do, and so I left at that point.

3 And then Janna was in the room. I had
4 been doing some charting, came out of the office
5 to bring some charts back and evidently they had
6 finished doing whatever they were doing. And I
7 noticed that Janna and Ms. Hernandez were standing
8 at the corner. And of course, I was immediately
9 suspicious that something might be amiss.

10 And so I stopped and was kind of just
11 right there to see what was going on.

12 And I could hear Janna saying, "Are
13 you okay? Do you need this? Sit down." You
14 know, she had the situation totally in hand.
15 There was no panic or -- and I could see she
16 wasn't, you know -- if she was going to go down, I
17 was there to help her. And at that point I just
18 was just about right at the door.

19 And I heard Dr. Noak. I heard
20 something slam or something because I didn't see
21 it. I just heard him say "She can walk." And he
22 came out of the room and inserted himself
23 between -- between Janna and the patient and took
24 her by the arm and briskly hauled her down.

25 Q. How did he get her by the arm? Was it

1 forcefully or I mean did he kind of just pull his
2 arm in or did he grab it real hard, or how was
3 that done?

4 A. You know, that's -- it's hard -- I
5 mean that's a subjective question. I can't answer
6 how hard he was holding or grasping. It looked to
7 me like -- I mean may be -- it was a little more
8 aggressive than what I would -- I mean.

9 Q. Okay.

10 A. But can I say he, you know, clamped on
11 to her?

12 Q. Right. You can't tell that?

13 A. I can't tell that.

14 Q. But I guess my question is, did it
15 look like he -- when you mentioned it looked
16 aggressive -- I guess would it be -- he didn't
17 grab her like -- knowing that she was ill or sick,
18 you made it sound like he wanted to get ahold of
19 her rather than, you know, gingerly take her, if
20 he walked down the hall briskly, like you said.
21 Now --

22 A. And I would have expect -- and see,
23 that's where it's hard to be objective versus the
24 subjective. I would have thought that, you know,
25 someone was ready to pass out or something. He

1 could have waited or figured out what was going on
2 before he just...

3 Q. Now, was he called in just for
4 Hernandez?

5 A. He did see another inmate that he was
6 supposed to have seen too.

7 Q. Did he seem upset that he was here?
8 Or you've worked with him before?

9 A. Uh-huh.

10 Q. The way he acted, I guess, on the 30th
11 where, according to Hernandez, he was -- I don't
12 know, kind of what words he used -- he was real, I
13 guess, calling I think it was -- did he call you a
14 name or Janna a name?

15 A. Janna a name.

16 Q. Is he, I guess, rude? Or --

17 A. Uh-huh.

18 Q. He is?

19 A. At times, uh-huh.

20 Q. Okay.

21 A. He can be very abrupt.

22 Q. And on the 30th, he was, it sounds
23 like?

24 A. Yeah. I mean I don't know -- you
25 know, there's -- maybe abrupt to me is not abrupt

1 to him or somebody else, you know. But it
2 wasn't -- it wasn't an action that you --
3 especially when there were two people already to
4 have the situation under control. I mean, you
5 know, I didn't even rush right in there to take
6 over because Janna is a well-trained CMS and MT.
7 She had it totally under control.

8 Q. Do you know why he would have done
9 something like that?

10 A. Why he would do that?

11 Q. Yeah.

12 A. I can't really answer why he would
13 do -- why he would do that. I don't know.

14 Q. You know, I worked in the jail a
15 little bit, and over there -- Dr. Stewart was over
16 there. And it seemed like his wife and the other
17 nurses there would kind of tell the inmates where
18 to go and prep everything for the doctor. And
19 then once the doctor was done, his main thing was
20 to take care of the inmate and everything else,
21 you know, the nurses can take care of or the
22 officer there.

23 And for him to get involved in
24 escorting somebody down the hall, is that unusual
25 for him to do? Have you seen him do that before?

1 A. Well, I think it's -- of course a
2 doctor can do whatever, you know, if he felt a
3 need to do that.

4 Q. Uh-huh.

5 A. But usually they do the assessment
6 and, you know, all the other manipulations are
7 done by nurses or CMSs. He hasn't really come
8 over here to this facility all that often. So I
9 don't really have the opportunity to see him
10 interact that frequently with patients.

11 Q. Okay.

12 A. I see him once in a while over at the
13 ER. And not the (unintelligible). And so but the
14 majority of the time I'm here with the women,
15 so...

16 And to my recollection, he was -- he
17 was told to come over here and take
18 (unintelligible).

19 Q. You don't know, but do you think that
20 may have pissed him off a little bit, to be
21 told --

22 A. Possibility.

23 Q. -- you know --

24 A. I can't (unintelligible) that.

25 Q. Hernandez said that she was in a

1 wheelchair -- whenever she was moved around, she
2 was in a wheelchair.

3 When you brought her down -- was it
4 down in a wheelchair, or did she walk?

5 A. I brought her down. I escorted her
6 slowly. I gave her time to ambulate because, to
7 my way of thinking, she needed to get up and move
8 around and not -- you know, I just wanted to
9 see -- and she could do it. We just took our
10 time. And she did okay.

11 Q. Okay.

12 A. But she had been in the wheelchair
13 before because her pain was pretty excruciating.
14 This was all after the fact. You know, she may
15 have passed this down. I think it was urinary
16 tract infection. It may have been already
17 resolved because I had put her on antibiotics.
18 This was several days after her initial complaint.

19 Q. Okay.

20 A. So she may -- you know, she may have
21 been feeling like she could -- she -- she had
22 started eating a little bit more at that point and
23 stuff. Reportedly she was still passing blood in
24 her urine. So she still had some atypical
25 something going on.

1 Q. She also mentioned that before seeing
2 the doctor she was called down to have her blood
3 pressure --

4 A. Uh-huh.

5 Q. -- taken and then she was sent back to
6 her room or whatever.

7 A. Uh-huh.

8 Q. Can you tell me what the purpose of
9 calling her back?

10 A. I had been -- she had been having
11 fluctuating blood pressures. Is that indicating
12 the specific -- the only thing is when somebody's
13 in excruciating pain, their blood pressure usually
14 goes up. And she had (unintelligible) where her
15 blood pressure failed and went down. So I think
16 that's pretty much just part of her follow-up, a
17 lot of times blood pressure checks and vital signs
18 are part of a status post coming back just to see
19 how she's doing, what was going on.

20 Q. What was the amount of time between
21 the two visits?

22 A. Between when she came down for her
23 blood pressure?

24 Q. Right. And when she saw the doctor.

25 A. Probably within 30 minutes.

1 Q. Was the doctor already here the first
2 time or --

3 A. Yeah, I believe so.

4 Q. Okay.

5 A. I mean I can't tell you when her blood
6 pressure was checked because I was in my office.
7 And I had gone down with Janna to see how she was
8 doing. In fact, that's when we came back -- as we
9 were coming back is when we noticed that Dr. Noak
10 was in the office. I didn't know he was there
11 prior to that.

12 Q. And then according to Janna's
13 statement here, after that incident, Dr. Noak I
14 guess just kind of left without saying anything to
5 anybody.

6 Did he say anything to you?

7 A. He did. He did say that -- this
8 was -- perhaps she didn't see it or know that it
9 happened because he had examined Ms. Lintas
0 (phonetic) after that. And he did poke his head
1 in my office and say that he thought that she
2 should be getting a lot better in the next few
3 days.

4 Q. Hernandez? He didn't say anything
5 about what had happened, though, with him grabbing

1 her and walking her down?

2 A. If he said anything, I don't have any
3 idea of what was said to her. He just said that
4 she would be feeling a lot better within the next
5 couple of days.

6 Q. Did you talk to Janna about the
7 incident?

8 A. I was concerned because she was like
9 very upset, and obviously (unintelligible). I
10 mean she was just -- she was just in shock. She
11 was like --

12 MR. WOLFE: Pardon me. Are you talking
13 about Janna or --

14 MR. LAKASKEY: Yeah.

15 MR. WOLFE: -- Hernandez? Okay.

16 THE WITNESS: Yeah.

17 MR. WOLFE: Thank you.

18 THE WITNESS: And she said, "I've never
19 been treated like that." I mean she was just --
20 so I was checking to see if she was all right.

21 Q. (BY MR. LAKASKEY): Okay. Have you
22 ever been treated that way by the doctor?

23 A. I'm a professional, and I have never
24 seen that kind of -- I mean this is a very -- not
25 to defend that, but, you know, this is -- this job

1 is sometimes very (unintelligible). But, you
2 know, the bottom line is we still have to act like
3 professionals and these are still people.

4 Q. Uh-huh.

5 A. They're still people.

6 MR. LAKASKEY: That's probably all the
7 questions I have.
8

9 EXAMINATION

10 BY MR. WOLFE:

11 Q. Well, again, I'm Steve Wolfe, and I
12 work for the Department of Corrections from the
13 Office of Professional Standards. And I don't
14 know if you know what, if anything, they do, but
15 basically we're the internal affairs of the
16 department.

17 And a detective is here from the Ada
18 County Sheriff's office looking into the potential
19 criminal aspect of this case. The Office of
20 Professional Standards looks at the case from a
21 staff misconduct point of view. So what I'm
22 looking for is the presence or absence of any kind
23 of staff misconduct.

24 And because Dr. Noak is a contract
25 employee, and I believe you are as well, we're

1 looking at it from a violation of a contractual
2 relationship of sorts. Okay?

3 So I would like to get your
4 permission, from my perspective, to record this
5 conversation for the purposes of my investigation.

6 Would that be okay?

7 A. Uh-huh.

8 Q. And I need you to speak a little
9 louder so it's documented.

10 Okay?

11 A. All right.

12 Q. Has anybody forced you or coerced you
13 in any way to take part in this interview?

14 A. No.

15 Q. Did you know we were coming out here
16 to interview you?

17 A. I had heard that there would be
18 interviews, and there was a card left on my desk
19 by a David Jansen or something.

20 Q. He's the one that took the initial
21 report, yes.

22 A. That's all I know.

23 Q. Okay. You had mentioned earlier about
24 Norma having potential kidney stones and passing
25 blood in her urine and that kind of thing.

1 In that time prior to the visit with
2 Dr. Noak, did you feel that she was in any way
3 embellishing her illness or faking it, or did you
4 believe that you had a real potential issue
5 medically with Norma Hernandez?

6 A. I believe she had a medical issue.
7 It's kind of hard to embellish hematuria.

8 Q. Right. Correct.

9 A. I mean I can't say how -- everybody's
10 pain is subjective, the intensity there. But she
11 had some -- she had some definite something going
12 on. And, you know, you have to pay attention to
13 that. And we did.

14 Q. Okay. And the day that Dr. Noak came
15 over here, you had mentioned earlier that you
16 believe that he was told to come over here that
17 day.

18 What exactly did you mean by that?

19 A. Well, because the request had gone in
20 for him to come and examine her, he did not show
21 up on the day that he was supposed to. I don't
22 know if it was the day or the time. Anyway, he
23 did not show up. And to my understanding, Janna
24 then called Andy -- Andy or Dana were the
25 administrators -- and asked if he was going to

1 come over.

2 And the way I understood it, Andy went
3 through whatever channels he went to to make sure
4 Dr. Noak came over and saw this woman before the
5 weekend was done. And so I'm thinking that -- I
6 don't know who told him. I was just -- he had
7 been contacted and told he needed to come over and
8 follow up with this woman.

9 Q. Okay. And so you don't have any idea
10 what conversation took place between Andy and
11 Dr. Noak?

12 A. No.

13 Q. Do you know for a fact that something
14 was said at all?

15 A. I know that it went from here to Andy
16 that he needed -- and that he needed to come over.
17 But I can't really verify it went past Andy to
18 somebody else. I can't --

19 Q. And how did it get to Andy?

20 A. I think Janna called him.

21 Q. Okay. You're -- just so I understand
22 in my mind about the actual position that you and
23 Dr. Noak hold, you're a physician's assistant;
24 correct?

25 A. Correct.

1 Q. Which means, in essence, that Dr. Noak
2 supervises you; correct?

3 A. Right.

4 Q. Okay. Have you ever had any issues
5 with him in regards to supervisory problems where
6 you -- and I realize everybody disagrees.

7 But did you ever have any major
8 disagreements with Dr. Noak in regards to the way
9 patients were handled, or anything like that?

10 A. Yeah. Yeah. But, you know, again,
11 he's a lot smarter than I am. And, you know, he
12 does things a little differently than sometimes I
13 would, and I have to step back and say, "Well, I
14 didn't" -- I don't always agree with what he does.
15 But I have to go by what he says because he is my
16 supervising doc. And that's okay, you know, to
17 have an interaction like that.

18 Q. I understand it. Let me ask another
19 question here.

20 You said that he came out of the
21 office on January 30th and, if I understood you
22 correctly, you said he inserted himself into the
23 situation between Janna and -- the interaction
24 between Janna and Norma Hernandez.

25 Could you elaborate on "inserted"?

1 A. Let's see. I'm trying to select the
2 right word because -- I mean it did happen very
3 fast. I just know that I saw Janna moving off to
4 the side.

5 Q. I mean she -- you know what? How
6 about demonstrating. Do exactly what you saw
7 happen on me. Okay? I'm Norma. Okay?

8 A. Okay. Janna had her, and I would have
9 been coming from this direction.

10 Q. Okay.

11 A. Okay. So she kind of had her ready
12 and right up here against the wall.

13 Q. Okay.

14 A. She kind of had her up against the
15 wall in case she went down. And she had her on
16 this side.

17 Q. Okay.

18 A. This is the door coming out of the
19 exam room.

20 Q. Okay.

21 A. I was coming this way, and she had her
22 here and she was like this.

23 Q. Okay.

24 A. Okay. When I -- and I was watching to
25 see if she was going to go down. What I saw is

1 Dr. Noak come -- like this was the door. Come
2 around and he went right in like that and he
3 immediately took over and away he went.

4 Q. Was she willingly following him?

5 A. I don't think she had much -- she was
6 moving. I'm not quite sure -- you know, if she
7 was just fearful, if she -- you know, again, I
8 can't ascertain her feeling.

9 Q. Right.

10 A. But she definitely was moving much
11 faster than what -- I mean we were kind of bracing
12 and waiting to see if she was going to have a
13 (unintelligible) episode.

14 And when I looked, Janna was over here
15 and they were moving.

16 Q. Approximately how tall is Dr. Noak?
17 I'm 6 foot.

18 A. He's at least 6 foot. Yeah, he's
19 probably close to 6 foot.

20 Q. And approximately how tall is Norma
21 Hernandez?

22 A. 5' -- 5'5".

23 MR. WOLFE: Okay. That's all I have.

24 MR. LAKASKEY: I just have a few more
25 questions.

1 FURTHER EXAMINATION

2 BY MR. LAKASKEY:

3 Q. When Janna had Hernandez and doctor
4 came in, how did he get Janna aside? Did he push
5 her aside with his -- I guess he would have
6 grabbed Hernandez with his left arm. Was his
7 right arm -- did he push Janna aside?

8 A. Well, I can't say if he pushed or if
9 he just inserted. It just happened that fast, but
10 he did take her by the left arm, at the same time
11 was -- I mean it occurred in one swoop.

12 Q. Okay.

13 A. I don't know if it was moved it. You
14 know, I can't -- I don't know. But it was one
15 fluid movement he was in place and Janna was out
16 of place.

17 Q. Did you hear the doctor or Hernandez
18 say anything as they were headed down the hall?

19 A. No, I did not. I just heard, like I
20 said, Dr. Noak when he came around the corner say
21 "She can walk."

22 Q. Okay.

23 A. But again -- again, you know, that was
24 like how do we know that so fast?

25 Q. I'm going to ask you, when he examined

1 her, did he -- did he note anything or did he say
2 anything to you about her condition? Did he say
3 anything to her about her --

4 A. During the exam --

5 Q. Right.

6 A. -- no, huh-uh.

7 Q. Okay. So as far as anybody in the
8 room, you don't -- you weren't in the room when
9 the examination happened or --

0 A. The first part.

1 Q. Okay.

2 A. When he was doing a physical
3 assessment and he had gone back to chart. And at
4 that point Janna was in the room and I came to my
5 office.

6 Q. Okay. All right. So she came down,
7 but yet she didn't know the outcome of the
8 examination because he never said anything to her,
9 as far as you know?

0 A. Not right then.

1 Q. When? When was it?

2 A. I believe -- you know, I was in there
3 when he was doing his physical assessment. And he
4 didn't say anything -- well, other than "Does this
5 hurt?" or "Where?" or, you know, that sort of

1 questioning. But I did not hear him talk about
2 her diagnosis --

3 Q. Okay.

4 A. -- or anything like that, no.

5 Q. Okay. Because you had left or because
6 he didn't say anything?

7 A. During the exam he just asked her
8 questions about "Does this hurt when I push here?"
9 But that was it. And then I left, and I don't --
10 I wasn't in the room after that.

11 Q. Did he chart it?

12 A. He did chart. He did chart.

13 Q. What did his chart say?

14 A. Do you want me to get the chart?

15 Q. Sure.

16 If you don't mind.

17 MR. WOLFE: No, I don't mind.

18 THE WITNESS: Could you pull Hernandez's
19 chart for me?

20 Q. (BY MR. LAKASKEY): Has he been back
21 since the 30th of January, that you know of?

22 A. No.

23 Q. Now, are you here full time at this
24 facility?

25 A. I am here three days a week.

1 Q. How about the other four days, is
2 somebody else here or --

3 A. Well, there's medical staff, but not a
4 provider.

5 Q. Okay.

6 A. And it might be -- it's my
7 (unintelligible) to get some of those.

8 I saw her again on the 4th for a
9 follow-up.

10 Q. During that follow-up do you recall a
11 conversation between you and Hernandez regarding
12 what had happened?

13 A. No.

14 Q. Okay.

15 A. I simply examined her on -- you know,
16 just to ask her about how she was feeling. She
17 complained still on the 4th that she still was
18 tender at times, especially with twisting motions.
19 Right flank pain, was still sore, but no more
20 muscle spasms. And at that time that was -- at
21 that time she was not having any more blood in her
22 urine.

23 Let me back up here. On the 28th --
24 these are some of -- this is when Janna was seeing
25 her. On the 29th, "Flank pain when walking and

1 severe pain and blood in urine. Feels weak and
2 droopy." I already started her on the Septra.

3 Q. Is that an antibiotic?

4 A. Uh-huh. "Per Andy Nitchum (phonetic),
5 HSA, Dr. Noak will be down to evaluate patient
6 later this afternoon."

7 That's when she called and said "Is he
8 coming?"

9 So that's when I said "I don't really
10 know."

11 Andy must have contacted somebody,
12 but...

13 On the 29th she had a syncope episode.
14 She actually fainted.

15 Okay. She called Dr. Noak on his cell
16 phone.

17 Q. "She" would be --

18 A. Janna.

19 Q. Okay.

20 A. Was at a meeting and it would be close
21 to 2300 before he could get down here. And that
22 was on the 29th.

23 At that point Dr. Noak said take her
24 on down, ordered, and so forth. And then on the
25 30th -- she was brought back on the 29th. And on

1 the 30th is when he came down and basically did
2 his assessment, and this is his findings, which
3 were "Abuse, pain, and spasm. Some abdominal
4 pain. Colicky, left side pain and radiated up to
5 the right upper quadrant and down to the pelvic
6 region. Cause of pain hematuria yesterday.
7 Vitals normal. No fever. Seen at the hospital.
8 CT urogram indicated no calculi."

9 Q. So on his assessment --

10 A. So on his assessment, his final
11 diagnoses were "Lower back pain, hematuria
12 resolved. Hydrate, bed rest, stretching
13 exercises."

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

FURTHER EXAMINATION

BY MR. WOLFE:

Q. How would you tell a patient to
hydrate yourself and exercise?

A. How would I tell them? Well, if I
thought they were really dehydrated, I would give
them some IV fluids. But if I just wanted them to
flush a lot, I'd tell them to drink, you know,
possibly up to 64 ounces of water. Just flush
lots of fluids. Exercise -- I mean it would
depend on what I would want them to exercise. I'd

1 be very specific in low back exercises. There's
2 specific exercises to do that, whatever, you know,
3 is in the chart.

4 Q. Well, I guess the purpose of my
5 question is, is, to your knowledge, did this ever
6 get transmitted to Hernandez, that she should
7 drink water and do back exercises?

8 A. Okay. This was -- I don't know. You
9 mean do I know if he told her that?

10 Q. That's what he wrote in his chart;
11 right?

12 A. Yeah.

13 Q. "Back exercises and hydration."
14 Do you know if he ever transmitted it
15 to her?

16 A. I don't know.

17 Q. How would we find that out?

18 A. I guess you'd have to ask her. She
19 was hydrated prior to that because I had had
20 several IVs administered to her. And hydration
21 is, you know, the standard for anybody -- any time
22 you're thinking someone's pushing a stone, flush
23 them. And so I had had her on IVs the night
24 before she came and went down to the hospital.

25 But I don't know if he told her to

1 drink fluids or exercise. I don't know that. I
2 wasn't in there when he --
3

4 FURTHER EXAMINATION

5 BY MR. LAKASKEY:

6 Q. It was -- it was him and Hernandez,
7 then, and Janna that was in there, as far as you
8 know, because you weren't there?

9 A. Right. I wasn't there. I mean you'd
10 have to ask her if he told her that.

11 Q. Do you know when the next time she
12 comes to work here?

13 A. Janna?

14 Q. Yeah.

15 A. I don't. You'd have to ask Dana.

16 Q. Okay.

17 A. I don't know her schedule.

18 Q. Okay. I only have a few questions
19 regarding your home address and all that so in
20 case you're needed for court purposes. And I was
21 wondering if I could get that from you.

22 A. 2619 North Silver Leaf Way, Meridian,
23 Idaho. My home phone is 855-9323.

24 Q. Thank you.

25 Do you have any questions either of us

1 can maybe answer?

2 A. Are the tapes still rolling?

3 MR. WOLFE: Yes, they are.

4 I just have one question before we go
5 off the record.

6

7

FURTHER EXAMINATION

8 BY MR. WOLFE:

9 Q. I wouldn't normally ask your opinion,
10 but since you're a physician's assistant, you're
11 highly trained in the area of medicine, maybe not
12 as high as a doctor, but clearly you're highly
13 trained and well respected.

14 In your opinion, do you feel that
15 Dr. Noak took this exam seriously?

16 A. Like I said, I was there for the
17 physical assessment. And I do believe that his
18 assessment -- because I watched him palpate her
19 abdomen and checked for flank pain. He listened
20 to her lungs. He listened to her heart. So yeah,
21 I think his physical assessment was adequate.

22 MR. WOLFE: Okay. This concludes the
23 interview of Karen Barrett at approximately
24 4:05 p.m. on February 11th of '04.

25 (Interview concluded.)

REPORTER'S CERTIFICATE

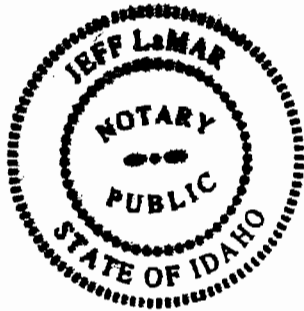
STATE OF IDAHO)
) ss.
COUNTY OF ADA)

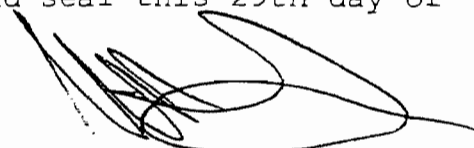
I, JEFF LaMAR, Certified Shorthand Reporter
and Notary Public in and for the State of Idaho,
do hereby certify:

That I transcribed the foregoing audiotaped
interview to the best of my ability;

I further certify that I have no interest
in the event of the action.

WITNESS my hand and seal this 29th day of
July, 2009.




Jeff LaMar
CSR and Notary Public in
and for the State of Idaho.

My Commission Expires: December 30, 2011

EXHIBIT 13
CERTIFIED TRANSCRIPT OF THE INTERVIEW OF
NORMA HERNANDEZ

000668

Re:

Noak v. Prison Health Care Services, Inc.

TRANSCRIPTION OF AUDIOTAPED

INTERVIEW OF NORMA HERNANDEZ

FEBRUARY 11, 2004

Reported By:

JEFF LaMAR, C.S.R. No. 640

ORIGINAL



1618 W. Jefferson ▼ Boise Idaho ▼ 83702
(800) 588-3370 ▼ (208) 343-4004 ▼ (208) 343-4002 Fax

000669

1 MR. WOLFE: My name is Steve Wolfe. And I
2 work for the Department of Corrections. I'm the
3 chief investigator for the Office of Professional
4 Standards. Okay? It's internal affairs. We
5 don't like to call it that, but that's what it is,
6 basically.

7 MR. LAKASKEY: I'm Don Lakaskey. I'm with
8 the Ada County Sheriff's office.

9 THE WITNESS: Nice to meet you.

10 MR. LAKASKEY: Nice to meet you too.

11 MR. WOLFE: We're obviously here to
12 investigate the matter involving Dr. Noak. And
13 Ada County is here to investigate the criminal
14 aspect, and I'm here to investigate from potential
15 policy violations. I'm here to prove the presence
16 of or absence of any kind of staff misconduct.
17 Okay? So we're just going to talk to you about
18 that. And I'll let the detective kind of lead the
19 way.

20
21 EXAMINATION

22 BY MR. LAKASKEY:

23 Q. You know, I received some reports, the
24 forms that you filled out, stating what had
25 happened, and then the initial report which was

1 filed through the lieutenant here. I guess you
2 had spoken to her and said you wished to file a
3 report on that. I noticed that you're supposed to
4 be leaving here on the 4th of April.

5 Is that true?

6 A. (No audible response.)

7 Q. Where are you going after that?

8 A. Twin Falls, to my mom's.

9 Q. Okay. What's your address going to be
0 there?

1 A. 295 Lois.

2 Q. 295?

3 A. 295 Lois Street, Twin Falls, 83301.

4 And the phone number is (208)733-6236. My
5 mother's name is Cecilia Rhodes.

6 Q. Okay. The reason I ask that is --
7 we're going to go ahead and tape this if you don't
8 mind.

9 A. Oh, no, I don't mind.

0 Q. The reason I ask that is because if we
1 do -- if you decide you want to go ahead with the
2 criminal charges, you'll have to come back to
3 testify obviously, because you're, you know, the
4 victim in this, a witness, you know what happened.

5 Is there going to be a problem with

1 you testifying, or do you want to --

2 A. No.

3 Q. Okay.

4 A. I want to.

5 Q. Okay. So we'll go ahead and continue
6 on with that, get some information on what
7 happened.

8 Let's start, this happened
9 January 30th; is that correct? And that was a
10 Friday, I believe?

11 A. Yes, I believe so.

12 Q. Okay. If you can -- yeah, Friday. If
13 you can tell me what -- I guess how were you
14 feeling that made you go ahead and put in a kite
15 or something to go ahead and request medical
16 assistance? Were you just feeling sick or was
17 there --

18 A. I had been sick for a few days.

19 Q. Okay.

20 A. I had (unintelligible).

21 Q. And you were being treated here for
22 that?

23 A. Yes.

24 All I really know about me being sick
25 is I had -- I was really sick.

1 Q. What were some of the symptoms?

2 A. Some of the symptoms? I had kidney
3 problems. I had back pain, you know, where my
4 kidney is.

5 Q. Okay.

6 A. And my kidney was bleeding. I had
7 done some lab work here, as far as that goes. And
8 it was even after that. And I was very ill. I
9 couldn't get out of bed, from dehydrated, to a lot
0 of pain, to the pain in my back. And my -- and
1 that went on for a couple days. I had an IV here.

2 Q. So probably the whole week, maybe
3 started the 26th, or even before that?

4 A. I think it was on the 27th. I believe
5 it was a Tuesday afternoon is when I first noted
6 to them that I was sick.

7 Q. Okay.

8 A. So...

9 Q. Who were you seen by before Friday? I
0 mean was there a different doctor here that --

1 A. The P.A. here, Karen Barrett.

2 Q. Okay. So she saw you most likely on
3 the 27th, 28th?

4 A. She seen me on the 27th. She seen me
5 immediately because my blood pressure was so high

1 that the machine kept beeping off
2 (unintelligible).

3 Q. And what did -- what did Karen tell
4 you?

5 A. They weren't sure at that time what
6 was going on. They put me on an IV. I don't know
7 what was in the IV.

8 Q. Were you ever transported off the
9 facility?

10 A. Yes. A couple of days later, about
11 Thursday night prior -- well, the 29th, I believe
12 it was --

13 Q. Okay.

14 A. -- was the night they took me into the
15 hospital. They had waited for -- I recall -- I
16 was really sick, and I recall them telling me for
17 a whole day -- maybe it was a whole night and a
18 day that the doctor would be here. They wanted to
19 get me to the hospital, and that the doctor would
20 be here to approve for me to go to the hospital or
21 something. At the time I didn't realize that
22 Mrs. Barrett, the P.A. here, was not my doctor. I
23 did not know that she wasn't the doctor.

24 Q. Okay.

25 A. And then finally they came in my room.

1 It was late. I don't know. It seemed late when
2 they took me to the hospital. And so they just
3 got permission to take me in. And I know I didn't
4 get back here until 3:00 in the morning because a
5 couple of girls were (unintelligible). But -- so
6 then I went to the hospital.

7 Q. Which one?

8 A. Saint Alphonsus. You know why I
9 remember that? They took my blood. They took my
0 blood pressure. They put me on the blood pressure
1 machine. They left the room. They came back
2 immediately and shot me up with -- I'll never
3 forget -- what they called a Dilaudid.

4 Q. And what is that?

5 A. A pain relaxer something that just
6 knocked me to next week. I did not -- after
7 that -- and that was a big deal, and I try not --
8 because I refused it. I mean I kept refusing the
9 pain medication through the whole time because I
0 feel I'm in treatment, you know.

1 Q. Uh-huh.

2 MR. WOLFE: For drugs?

3 THE WITNESS: Uh-huh, yes.

4 MR. WOLFE: Okay.

5 THE WITNESS: And, you know, a drug is a

1 drug to me. I didn't want any narcotics at that
2 point.

3 Q. (BY MR. LAKASKEY): Okay.

4 A. And so that was a big issue, and
5 that's why they specifically told me what they
6 were doing and how much they were doing and why
7 they were giving that to me, because they knew how
8 much pain I was in and stuff, whatever was going
9 on. And I understand (unintelligible).

10 Then I came back here -- home -- I
11 came back to the facility at some time in the
12 middle of the night.

13 Q. Early Friday morning?

14 A. Yeah.

15 Q. Okay. Then later on during the day
16 you were called to see a doctor here; right? Or
17 did you request that?

18 A. I did not request it. It was just
19 something that -- I had requested to -- I don't
20 know who this character is. I don't know where he
21 came from. I know it was the only time I had ever
22 known him to be here really, surprisingly, because
23 I had just -- let me think. I had just got back
24 from seeing the doctor. I had just been down
25 here. And they took my blood and everything, and

1 I was in a wheelchair. I -- the day before I went
2 into the hospital. I was in the hallway.

3 Whatever was wrong with me had bloated
4 my stomach so much I couldn't put a shirt on. My
5 stomach was huge. I looked -- I mean it was just
6 bloated. So I remember the nurse in the bathroom
7 with me. And then I had several girls helping --
8 assistants helping.

9 And I was coming out of the bathroom
10 and I was telling the nurse, I was -- Janna. I
11 don't remember her last name. I was explaining to
2 her how it hurt. And I was really serious about
3 the pain medication. I did not want it. I would
4 refuse it. I mean I would refuse it. And they
5 didn't like that.

6 And she was like, "Norma, if you're in
7 that much pain."

8 Then, you know, I says, "Well, my
9 stomach, something's going on right now." I don't
0 know if this is the day I went to the hospital. I
1 think it was that evening I went to the hospital.
2 All's I remember is telling her my stomach, like
3 the pain.

4 And my roommate's Skinner, and she's a
5 big Indian woman. She's big. She's solid. She's

1 like a guy. She was helping assist me. And I
2 turned around to walk out of the bathroom. And
3 the next thing I know I woke up on the floor on
4 the other side of the hall (unintelligible). And
5 it seemed like I was gone for days or something.
6 But I guess I just passed out and whatever
7 happened took me across the hall and down the
8 hall. You know, so I don't know how that
9 situation happened. But that's how sick I was.

10 Q. Okay.

11 A. I mean it wasn't just the flu. It was
12 a bit more.

13 Q. What was it? Did you ever find out
14 what it was?

15 A. No. They said there was a lot of gas
16 in my X-ray or something. I don't know. They did
17 a CAT scan, but not enough to say there was a
18 bowel obstruction. But, you know, I don't know.
19 I really never got to the bottom of it.

20 Q. Has that ever happened to you before?

21 A. After all this happened, and then I
22 just -- I don't think I'm clear out of the woods
23 yet.

24 Q. Okay.

25 A. So I'm -- I'm the maintenance

1 assistant around here. I'm the groundskeeper.
2 I'm a trustee here. I'm like -- I am the most,
3 out of all the inmates, pretty much the trustee
4 here. I (unintelligible) and I have been since
5 the week after I was here.

6 And my duties consist of, oh, from
7 pushing snow for eight hours in the parking lot to
8 delivering bags at five o'clock in the morning,
9 garbage bags to every girl in this facility. And
10 now I'm just back on light duty. I'm not even
11 back. They have not allowed -- they haven't come
12 and picked my extra pillows and blankets yet for
13 my bed. So that, to me, tells me that staff knows
14 that, you know, they are still on warning that I'm
5 not back to full.

6 Q. Uh-huh.

7 A. Do you know what I'm saying? Because
8 they're real sticklers on one pillow and two
9 blankets. I mean that's a given. I have several.
10 I mean that to me tells me (unintelligible).

1 Q. Two quick questions. When did you
2 first get here?

3 A. November 13th of '03.

4 Q. Of 2003?

5 A. Yes.

1 Q. Okay. And have you ever experienced
2 this before, this type of illness before?

3 A. No. I had a kidney infection a couple
4 of times. I had a (unintelligible) right kidney,
5 which means it didn't bloom. It's about the size
6 of a golf ball. My other kidney is really big.

7 Q. Okay.

8 A. But I mean I have -- I've been -- I'm
9 on kidney medication right now.

10 Q. Were you on before -- I mean I
11 guess --

12 A. In the past I have been.

13 Q. Do you think this has anything to do
14 with your kidneys?

15 A. I think it does.

16 Q. But you never heard anything like that
17 from the doctor or anything like that?

18 A. Yeah, as far as my blood work, my
19 urinalysis --

20 Q. Uh-huh.

21 A. -- it has a lot to do with it. They
22 tested it every day for blood or whatever. And it
23 has it in my -- my kidney's been bleeding or
24 whatever --

25 Q. Okay.

1 A. -- up until about three days ago.

2 Q. Okay. All right.

3 A. So yeah.

4 Q. All right. So let's kind of jump
5 ahead here.

6 So you come back at around
7 three o'clock in the morning, you think, you
8 heard.

9 What time were you called down to see
0 the doctor here? Do you recall?

1 A. It was the next day. It was way late
2 in the day, the next day.

3 Q. So you come in at 3:00 in the morning,
4 and then later the same day, though, right, we're
5 talking Friday? So late in the day you're called
6 down?

7 A. And I see the P.A. there first.

8 Q. Now, did you walk down?

9 A. No.

0 Q. In a wheelchair?

1 A. I was in a wheelchair.

2 Q. Okay.

3 A. They had me assigned to a wheelchair.
4 I wasn't about to go anywhere without one.

5 Q. Okay. And what did you see there at

1 about --

2 A. They checked my blood. They did all
3 that. At the time my blood pressure was like
4 jumping from extremely high to extremely low. And
5 that was another thing that stumbled them, that to
6 right now really -- really concerned them. And --

7 Q. Okay.

8 A. And then I was only in there a few
9 minutes, I believe. And then I went back to my
10 room. Seemed like I just got comfortable and then
11 they called me down again. And it
12 (unintelligible). And that's when I seen --
13 that's when I was introduced to Dr. Noak.

14 Q. Okay. And when you were first
15 introduced, how was it? I mean did he say "Hi,
16 what's your problem? What can I help you with?"
17 Or do you recall what he said or how he said it?

18 A. I remember stepping into the room and
19 he had me get up on the table there. And then I
20 laid on my right side, since that was the only
21 position I could -- that didn't hurt because
22 (unintelligible). And he came over and -- I need
23 to think about this.

24 I do know that that man had me antsy
25 within minutes of being in that room by the way he

1 had everybody running around.

2 Q. What was he saying to them?

3 A. He was upset about a copy of the CAT
4 scan not being in the file. He was upset that he
5 just had to be here, period.

6 Q. How do you know that?

7 A. Because just the way he sat in that
8 table -- just the way he sat at the desk and would
9 talk to everybody, the way he talked to people.
10 It was totally -- it was off the hook.

11 Q. And that was the first time you'd ever
12 seen him?

13 A. Ever in my life. As a matter of fact,
14 I didn't even get his name until after all this
15 happened. I didn't even know who he was.

16 Q. Okay.

17 A. I didn't even get his name until like
18 the next day.

19 Q. Have you talked to anybody else around
20 here? Do they know who he is?

21 A. No. I do know that Janna -- Janna,
22 the nurse, said that he came from the back, and
23 after all this had happened -- what happened is
24 I'm in the room.

25 Anyways, he comes over and he checks

1 my breathing. He first got upset with me because
2 I couldn't breathe deep enough. And he
3 point-blank very -- said -- he says, "Now let's
4 breathe deep, and I'm serious," you know.

5 And I was like "Oh, dude."

6 Q. Uh-huh.

7 A. I was like, you know. And then he had
8 me lay down. He pressed on my stomach. I
9 informed him where it hurt, you know, when it
10 hurt. And I don't know. He asked me a couple of
11 weird questions like do I know what part of my
12 stomach that would be or, you know. And I was
13 like "No," you know.

14 Q. Uh-huh.

15 A. I didn't say too much
16 (unintelligible). Then he went over and sat at
17 the table and got really uptight when he couldn't
18 find a copy of the report of the CAT scan from the
19 hospital.

20 Q. Okay.

21 A. He was so uptight. You know, and I'm
22 laying on my side, and of course one of the nurses
23 was with me, Janna's on the phone immediately --
24 Janna, I think's her name. Janna. And she was
25 trying to get one faxed here.

1 And she has P.A. Barrett come in,
2 Ms. Barrett come in and sit with me while she
3 leaves the room. And I mean even during that time
4 he -- I want to say (unintelligible) is what he
5 called her. He called the P.A. a (unintelligible)
6 for not having that CAT scan.

7 And I'm sitting there looking at him.
8 I'm on my side and I'm thinking this is a -- I'm
9 thinking, you know -- and I've only been here for
0 three months. And I don't take any medication.
1 I'm not on anything. I'm not on antidepressants,
2 I have never been since I've been here. So I
3 don't deal with medical staff much. Okay?

4 You know, I went through a migraine
5 headache situation and -- where my face got
6 chapped in weather when I was out pushing snow for
7 eight hours for five days, you know. So I've
8 never heard of another doctor coming into the
9 facility.

0 Q. Okay.

1 A. So I'm still trying to figure out who
2 this guy is. And I'm thinking at the time that
3 Janna was the P.A. When he said this, when he
4 hollered this out -- he didn't holler it out, but
5 he said it loud enough to where I could hear him

1 at the examining table when he was at his desk,
2 which now I know a day later after that, or two
3 days later, that the P.A. is Mrs. Barrett. It's
4 not Janna. Okay?

5 But at the time I'm thinking he's
6 calling Janna these names, you know, because she
7 doesn't have this CAT scan report done. And I'm
8 thinking, God, that's just crazy.

9 And Janna comes back in and she goes,
10 "It's on its way" or she brings the CAT scan back
11 in. And then Ms. Barrett or whatever, she leaves
12 the room, it seems like. And then Janna comes
13 right up to my table and she's like,
14 "Ms. Hernandez, are you okay? You doing all
15 right? You're a little gray."

16 And that's what happened, is I turned
17 like a gray, like the color of that computer, like
18 a gray, like a chalky gray. I looked totally bad.
19 So she said, "You're turning gray. You know, are
20 you okay?" She says, "Do you want to sit up?"

21 And I said, "I just want to go back to
22 my room." And then I said, "Can you just take me
23 back to my room?" I'm thinking, I don't want to
24 even be in this room with this freak. I feel like
25 shit, you know, I don't want to deal with this

1 guy, and I don't know why I'm here in the first
2 place, you know, because I didn't know who he was.

3 And she says -- she looks over at the
4 doctor, and he has the CAT scan is what it is.
5 And she says, "Doctor" -- and she doesn't even say
6 his name. And I remember that because I'm
7 thinking probably, well, he'll figure it out and
8 (unintelligible).

9 And she says, "Doctor."

0 And he goes, "Go ahead. Get her back
1 to her room. Get her back to her room. Get her
2 back to her room. Take her back to her room. Get
3 her out of here." Now, there's several witnesses
4 that he said that. "Get her out of here." I mean
5 like I had just done something to him, you know.

6 Q. Uh-huh.

7 A. At this point now Janna's helping me
8 up from the examining table. I'm stepping out of
9 the room, and as we turn the corner, Janna's --
0 has ahold of my right arm through the whole time
1 I'm coming out of the room. And she just
2 (unintelligible). She's got ahold of my arm.

3 Q. Uh-huh.

4 A. And as we turned --

5 Q. Down by the wrist or --

1 A. She has her arm underneath my arm.

2 Q. Okay.

3 A. And then she has ahold of my arm.

4 Q. Okay.

5 A. So she has a pretty good grasp on me.

6 Q. Where was your wheelchair?

7 A. I think it was around the corner or
8 something.

9 Q. Okay.

10 A. And with all the confusion and
11 everything going on and everything, we just got
12 around the corner and maybe she was going to get
13 the wheelchair or something. But I would never --
14 I mean I wouldn't step out in the hall even at my
15 room to use it. But we got out in the hall and
16 that's when all this happened.

17 Q. So --

18 A. So there was no even discussing "Let's
19 get a wheelchair" because everything happened so
20 fast.

21 Q. Janna got your right arm and was
22 helping you out.

23 Where was Barrett at this time?

24 A. Barrett, I don't know. As -- I'm
25 not -- I'm not -- I don't know how to say this. I

1 mean I'm -- I'm coherent, but I'm not -- my knees
2 are like Jell-O, and I'm explaining to --

3 Q. Okay.

4 A. -- Janna I just wanted to go back to
5 my room. And it was weird. We're not -- the room
6 is right here that we were in.

7 Q. Where the (unintelligible)?

8 A. Yeah.

9 Q. Okay.

10 A. And then you step out, I mean
1 immediately right outside the door, you know, this
2 far from you the next --

3 Q. Which way?

4 A. I'm up against -- I'm going this way.

5 Q. Okay.

6 A. My room is, of course, at the end of
7 the hall.

8 Q. Okay.

9 A. You know, second to the last one. And
0 I come out, and she's like, "Norma, just lean up
1 against the wall," you know.

2 And I said -- I just said, "I want to
3 get back to my room, no. You know, I just want to
4 get back to my room." And I'm not going to walk
5 up. I don't want nothing to do with anybody. I

1 just want to get back to my room. I just don't --
2 all right.

3 Q. Are you okay to continue?

4 A. At that time all's I'm thinking is I
5 just want to get away from that jerk. I didn't
6 know who he was or where he fucking came from. I
7 didn't even care. He was -- anyways, again we get
8 out in the hall.

9 And then she just asked me if I'm
10 okay.

11 She goes, "No, we're not going
12 nowhere." She was like talking to other people.
13 And she like, "Just focus on my eyes. Just look
14 at me in the eyes," you know.

15 And I'm trying to pay attention to
16 her. And she goes, "Lean up against the wall."
17 And it's like in the hall. "Just sit down. You
18 know, just sit down."

19 And I seemed to be -- I don't know,
20 for some reason I was arguing with her. I just
21 wanted to get to my room, you know. I just wanted
22 to get away from the situation. And then -- and
23 she's holding me, and I could feel her. She's
24 really holding, and I'm thinking, Okay. So -- so
25 I leaned up against the wall. And I'm just

1 getting ready to slide -- I don't know if I'm
2 going to fall down or slide or whatever.

3 And then I noticed somebody coming
4 around her, and I looked up, and it was P.A.
5 Barrett. And she was right in front of me, up
6 against the wall facing me. And she's holding my
7 other hand. And she's explaining to me, "Norma,
8 just sit down" or whatever. And she's -- then
9 she's telling me, "Look, Norma. Look at me."

10 And just as I looked up at her to look
11 at her in the eyes, the look on her face, I
12 mean --

13 Q. Whose face?

14 A. P.A. Barrett's.

15 -- I'll never forget it.

16 Q. What kind of look was it?

17 A. A scared like oh -- like total
18 surprise, like scared like -- so of course I look
19 around to see that she's basically frightened, you
20 know. And I turn around and look, and all I see
21 is a hand, one hand. And I see it over and over.
22 And Janna's right there. That's all I see is this
23 hand and Janna.

24 And it grabs her. Okay? And of
25 course I just, you know -- and I'll never forget.

1 And he -- and his hand pushed her, and I'm
2 thinking -- it's not like a throw push. Do you
3 know what I mean? Like a force.

4 Q. Uh-huh.

5 A. I mean he literally forced her to
6 move. And I don't really hear what's being said.
7 And I notice, wow, she's really hanging on to my
8 hand, you know, because she's still got ahold of
9 my arm.

10 Q. Uh-huh.

11 A. But she doesn't have her other arm
12 underneath no longer. But she still has ahold and
13 she's grasping tighter. I'm thinking I grabbed on
14 to her hand for some reason, you know, like to
15 help her or whatever.

16 And as I looked down, because I looked
17 over her shoulder and I looked down, and it's her
18 hanging on to me, but then there's his hand and he
19 literally grabs my arm and her wrist and he makes
20 me let go. He was forceful. He makes her let go,
21 and that's when he shoved her.

22 Q. Now, are you standing up at this point
23 or are you --

24 A. Yes, I'm still standing up.

25 Q. Okay. So he forcefully, I guess,

1 detaches Janna or Janna away off you?

2 A. Yeah.

3 Q. He pulls her hand away from you?

4 A. Yeah.

5 Q. Okay. What does he say when he's
6 doing that?

7 A. He says so -- he says -- he says, "I
8 will be escorting Ms. Hernandez to her room by
9 myself." And I'll never forget when he said "by
0 myself," because I'm looking up -- and
1 P.A. Barrett is still standing there.

2 And she -- I mean she was white at the
3 time. She just stood back. She just -- she's
4 just as scared as Janna and I were. She literally
5 stepped back.

6 And he grabs me up, and he's a tall
7 man. He's a really tall man. And --

8 Q. Which arm does he grab, if you
9 remember?

0 A. He grabs my right.

1 Q. Okay. So he's leading you down the
2 hall, your right side, and this wall?

3 A. Along this wall on the left side. I'm
4 over here by the wall.

5 Q. He grabs your right arm and you're

1 over on that side of the wall?

2 A. Over that way.

3 Q. All right.

4 A. So he's on my right.

5 Q. Okay. And he grabs you with his left
6 hand or --

7 A. Left hand.

8 Q. Okay.

9 A. He had ahold of me almost the same way
10 Janna did, almost, it seems like.

11 Q. With his arm underneath yours?

12 A. Yeah.

13 Q. Okay. What is he saying to you as
14 you're walking down?

15 A. He says -- we were -- I don't know --
16 like five, six -- I don't know, maybe -- I don't
17 know, a couple doors down, and I said, "Sir,
18 you're hurting me." I said -- I was trying to
19 explain how I had reconstruction on my shoulder,
20 and I was trying to explain that.

21 I says, "Sir" -- and I was trying to
22 say -- I'm on my tippytoe -- okay? -- he had me
23 lifted so far up, but my right foot was literally
24 on the tippytoes. I mean I was forcefully -- I
25 was on my tippytoes, and I mean I was shaking.

1 And he says -- he didn't say anything.
2 And that's what scared me more than anything. And
3 that's when he clutched on to me tighter. And I'm
4 thinking, looking around, and I'm thinking -- I'm
5 looking around for, you know, somebody.

6 Q. Uh-huh.

7 A. And I looked up on our bulletin board,
8 and I told him, I said, "Sir, I don't feel well."
9 I says -- and my ears were ringing and I got --
10 that's when I think my blood pressure was getting
11 really high.

12 And I had (unintelligible), and I was
13 like gray, you know. Not all the way, I mean, but
14 I could see (unintelligible) my blood pressure.
15 So I thought well (unintelligible).

16 And I didn't complete my sentence and
17 he says, "Ms. Hernandez," he goes, "my ears been
18 ringing for two weeks because of stupid admits
19 like you and your complaints."

20 And I just went, Whoa.

1 Q. So he gets you down -- how did he know
2 which room was yours?

3 A. Oh, just a couple of seconds later I'm
4 thinking -- he asked me, but I don't answer him.
5 It seems like there was somebody else in the

1 hallway that answered him. And he says, "Where's
2 her room? (Unintelligible.) That's what he said.
3 And I'm just -- because after he said that to me,
4 at one point -- oh, no, first he asked me -- he
5 has a way with words, you know, he
6 (unintelligible) words and, you know, gets his
7 point across pretty clear.

8 Q. Uh-huh.

9 A. And I'm thinking, Oh -- and I see --
10 and I don't know who they are to this day or if I
11 could just remember. There were girls in front of
12 the board, you know. And they're all like
13 (unintelligible) I'm all right, (unintelligible),
14 you know.

15 Q. Uh-huh.

16 A. And I noticed all of a sudden
17 everybody just come around the side of us or
18 something. And anyways, he says, "So how long did
19 you say you were (unintelligible)?" or something
20 like that.

21 And I said, "No, sir." And at this
22 point I'm saying, "Sir" -- you know, I'm like
23 still on my tippytoes, you know. And I said,
24 "It's two months."

25 And he says, "Well, do you not realize

1 there's something, and it's not as pretty at
2 Pocatello or it won't be as pretty at Pocatello if
3 I have to send you back there? I suggest you go
4 real quick" or something like that.

5 And I'm thinking, Oh, God, you know.

6 Q. Uh-huh.

7 A. I didn't know what to think.

8 Q. If you get sick here can you be sent
9 to Pocatello to finish out your time?

0 A. No, not more than likely. I guess
1 there was one other person (unintelligible).

2 Q. All right.

3 A. There was a girl right before me.

4 MR. WOLFE: Usually it's the other way
5 around. People want to get sent over here, don't
6 they?

7 THE WITNESS: Yeah, yeah. So that's just a
8 threat. I mean when he told me -- I mean Bengier
9 just had her stomach (unintelligible) right here
0 and was in and out of the hospital here, and she
1 recovered (unintelligible). She just got out
2 today.

3 And so no, it's not common to be sent
4 back to Pocatello when you have a health issue
5 here.

1 Q. (BY MR. LAKASKEY): Really?

2 A. And if you have a health issue in
3 Pocatello, I believe they don't let you come here.
4 Do you know what I mean?

5 Q. Uh-huh.

6 A. But if you're here doing okay, they'll
7 take care of it here.

8 Q. So when he said that, you think he was
9 just trying to pull some weight, thinking --

10 A. Oh, no, he told -- he threatened me.
11 He told me point-blank that if I didn't -- you
12 know, he would send me back to Pocatello.

13 And at that point I mean I don't think
14 I ever really -- that was just like -- to me like
15 crossing the line or icing on the cake or
16 something. You know, more and more what scared me
17 about him (unintelligible), you know, God, I
18 probably felt safer. I don't know. I mean I
19 don't know.

20 Q. Going down the hall --

21 A. He has his way, I'll tell you, of
22 saying what he says.

23 Q. Going down the hall, what kind of pace
24 were you guys walking in?

25 A. Very -- it seemed very fast. I mean

1 not too incredibly fast, but like I said, he's a
2 tall man. Or I don't know, maybe he's not. Maybe
3 he just seemed like it to me at the time. Okay?
4 He seemed really big. I don't know. He seemed
5 really big.

6 Anyways, we get to -- right after he
7 says that -- anyways, he goes -- and I'm thinking,
8 Oh, my gosh. I'll never forget, three more doors,
9 because there's my room. I'm thinking, Three more
0 doors, like I'm counting down the doors like we
1 count down the days here. I don't know if he was
2 saying anything at this point. I don't know.

3 I just know I'm holding my breath. I
4 am literally holding my breath. And we get -- I
5 don't know if he asked me or somebody else where
6 my room was. I'm at my room. I'm like, "There's
7 my room." And it's the second to the last door on
8 the left-hand side there.

9 And we stop in front of it and we walk
0 over to reach, because he still has my arm, and I
1 go to reach for the door, and he does also. And
2 he gets it first. And I looked at him. And he
3 says something to the extent of "Don't make me
4 have to prove what" -- I don't know what he said.
5 He said, "Don't make me do what I say" or

1 something like that.

2 Q. "Do what I say"?

3 A. Go back to Pocatello or whatever he
4 was referring to.

5 And I said, "Yes, sir." And he opened
6 my door with his right hand, and he pushed the
7 door. He pushed it, forced -- you know, really
8 with force, with some force to -- as if it was
9 going to open up enough for me to walk in.

10 Q. Uh-huh.

11 A. Well, it didn't. I have a stubborn
12 door. And it's a joke in my room because it makes
13 this really funny, cheap noise in the little
14 thingy up there. So I don't have it fixed. I'm
15 the maintenance here. I'd be the first one to fix
16 it. But when you open it sometimes, it makes this
17 funny noise, and it almost says "Hi." Okay?

18 So my door sticks. And it didn't open
19 up like he wanted it to, is what I got the visual
20 of. And so he used his foot when it came back.
21 And he used his foot and he shoved it open with
22 his foot.

23 Q. Okay.

24 A. And he says, "Now, I suggest you lay
25 down and get some rest, Ms. Hernandez."

1 And I said, "Yes, sir. Thank you,
2 sir" were my exact words. And I walked in there
3 and I was probably 2 feet away from my bed. My
4 door -- my bed's right there. And I sat on my
5 bed.

6 And my roommate stood up and goes like
7 "Who was that?"

8 And obviously I said, "I don't know."
9 I says, "I don't know, but I know he's a real
0 jerk." And I said, "That man just threatened me
1 all the way down the hall."

2 And I'm looking at Skinner and she
3 (unintelligible), and she says, "Are you okay?"

4 And I said, "I just need to get some
5 rest. And she's the one that -- well, they both
6 had been up with me for days, you know. And then
7 I laid down and went to sleep. Actually, I
8 couldn't sleep.

9 Q. When did you fill out the form?

0 A. A couple of hours later. I couldn't
1 rest because I was -- whatever was going through
2 my head, I was tensing up. So I asked Skinner, I
3 said, "Can you get the wheelchair?"

4 She says, "Are you okay?"

5 But it's crazy because the wheelchair

1 was there then. So they must have brought it down
2 right after he brought me down. He wouldn't let
3 me take a wheelchair. That's what it was.

4 Q. How do you know that?

5 A. He got upset. Maybe that's what
6 Mrs. Barrett was doing when Karen had me -- or
7 when Janna had me in the hall.

8 Q. Does he know that you came down in a
9 wheelchair?

10 A. Yeah. Well, I'm thinking. I don't
11 know. I don't know.

12 Q. Okay.

13 A. But then my wheelchair was at my room,
14 so they must have brought it down right directly
15 after. And Mrs. Skinner immediately brings the
16 wheelchair in the room, and she helped me get off
17 my bed. And I mean I don't ask to come down very
18 often much, you know. And I will lay there. They
19 have to come down to get my blood pressure.

20 And then I'm down there, and I hadn't
21 said anything to anybody. It was just a few
22 hours. Few hours. And then I heard
23 (unintelligible) "Are you okay?"

24 And then when I go in there, there's
25 two nurses. There's Nurse Janna and another

1 nurse. I don't know the other nurse's name.

2 And I said, "No." And I was laughing,
3 you know, I started making a joke out of it. And
4 I was like, "No." And I said, "No, actually. I
5 think I need some medication. I'm so tense right
6 now, the pain is really bad."

7 And she took my blood pressure and
8 said, "Wow." It gets so high. I mean when that
9 little machine pops off, I'm here like a Coke red
0 or whatever.

1 Do you know what I mean?

2 Q. Uh-huh.

3 A. And so she gave me a Flexeril and she
4 goes, "Ms. Hernandez, is somebody wrong?" She
5 said, "Are you okay?"

6 And I said, "No, ma'am. That guy was
7 a real jerk."

8 And as soon as I said that,
9 Ms. Skinner was standing there with me and my
0 roommate. I just busted. I couldn't -- I had to
1 say something. You know, I laid there for two
2 hours, you know, trying to figure out, you know,
3 what I might have done to this man. But anyways.

4 And so I says, "I need to talk to
5 somebody about this at the command station or

1 something."

2 And Janna immediately, I think -- she
3 goes, "Norma, you're our concern." And she
4 goes -- or something. I don't even remember what
5 she said. She goes, "If that's the way you feel.
6 You know, are you okay?"

7 I'm like -- it seems like she leaves
8 the room and goes up to control. And she comes
9 back, and she goes, "Yeah, that's what you need to
10 do if that's what you feel," you know, like...

11 Q. Uh-huh.

12 A. And it comes to find out, a couple of
13 days later I find out that during that couple
14 hours when I was laying there in bed, she went and
15 filed her complaint. You know, I had no idea.

16 Q. How did you find that out?

17 A. (Unintelligible.) I think I said
18 something to her. It was like three days later.
19 And I was having a really hard time. And
20 Mrs. Hitamoken (phonetic) -- I had came up to
21 control, and I couldn't -- and I asked
22 Officer Jackson if he had a free minute, please.
23 I really needed to talk to him.

24 Q. Who is Hitamoken?

25 A. She's -- she's the C.L. at the time at

1 night.

2 Q. Okay.

3 A. She's an officer here.

4 Q. Okay.

5 A. And even at this point for the last
6 two days prior to this, I hadn't been talking to
7 anybody on our floor. I didn't even talk to my
8 roommates about what I was going through because I
9 didn't want anybody to -- I don't know. I just --
0 I didn't talk to anybody about it.

1 So Ms. Hitamoken took me in the back
2 room and -- oh, back to my room. She called me
3 up. And we went in the back room, and I was
4 telling her, I says, "Man, I want to know who this
5 guy is. I want to know his name. I don't know
6 what happened here, you know, something
7 (unintelligible) because I can't" -- I couldn't --
8 and you got to understand, he probably caught me
9 at a really vulnerable time in my life, you know,
0 I don't know.

1 This really is a -- anyways, I was
2 telling her, asking for, you know, you know, "God,
3 do you have something I could read to deal with
4 this? You know, what's going on here?"

5 And she was trying to comfort me,

1 Ms. Hitamoken. And Janna was -- came in to eat
2 and just had a cup of coffee or whatever was
3 sitting there, and she kind of heard -- you know,
4 I was in tears. I was (unintelligible). Then I
5 was -- I was really emotional.

6 And she -- she sat down with us, Janna
7 did, and she listened for a while. And I was
8 saying how, you know, I didn't want to -- I think
9 at that point I'm thinking that everybody here,
10 you know, the staff is going to probably look down
11 on me or (unintelligible) concern for. Really,
12 that's what I believed in. And --

13 Q. Uh-huh.

14 A. And I need a book or something to try
15 to figure out what I was going through. And --
16 and Janna was sitting there, and that's when she
17 reassured me -- and I wish she would have told me
18 days earlier. It probably wouldn't have hit me
19 really hard, like if I wouldn't have been so
20 confused. But she notified me that -- she goes,
21 "No, I wrote down a complaint or a concern," is
22 what she said.

23 Q. Okay?

24 A. She goes, "Way before you did." She
25 goes, "So you did, you know -- nobody here thinks

1 you're lying or anything."

2 Q. So you said you wrote the complaint a
3 few hours after the incident happened?

4 A. Yes.

5 Q. So you're saying that they wrote --
6 filed a complaint days before you were seen?

7 A. No, a couple hours before.

8 Q. Okay.

9 A. She wrote hers a couple hours before.
0 She wrote hers immediately after all this
1 happened.

2 Q. Okay.

3 A. I didn't.

4 Q. And that was Janna -- Janna?

5 A. Janna.

6 Q. Janna. Okay.

7 A. Or she wrote something because she
8 noted it or did something and the staff argued
9 about it and the doctor -- you got to -- even
0 Mrs. Barrett, I believe it was that night -- that
1 day told me that.

2 Q. Okay. When he grabbed ahold of your
3 arm leading you down the hall, did you try to pull
4 away or anything when you said "You're hurting
5 me"?

1 A. Yeah. As a matter of fact, when he
2 grabbed me from the wall, I pulled back from him.
3 I mean, come on?

4 Q. Uh-huh.

5 A. He just grabbed Janna and forced her
6 away from me, and then he grabbed me. And I said,
7 "What" -- or I said something. And I pulled back
8 up against the wall. And I remember oh so looking
9 at Mrs. Barrett, because she was still standing in
10 front of me.

11 Q. Uh-huh.

12 A. But she's looking at his face. She's
13 looking up. And I'll just never forget how
14 everybody was so afraid of him. Because yeah,
15 because when I did go with him is when I -- I seen
16 Ms. Barrett -- Dr. Barrett. She's in front of me.

17 And I turn around and look and Janna
18 is standing there. And I remember looking at her,
19 and she looked all -- I got to watch the
20 expression come over her face. Her eyes turned
21 bloodshot red and teared up, and she just didn't
22 know what to do. I mean she was scared.

23 She just -- you know, I don't know
24 why. I mean it was -- I guess at that point I
25 think the best thing to do would be to do what he

1 was saying, would be just to go with him, you
2 know. I mean what choice do I have? I'm an
3 inmate --

4 Q. Uh-huh.

5 A. -- you know. Better probably if I
6 don't say anything or -- you know, I'm an inmate,
7 you know. Going down the hall I -- when I
8 informed him before we even -- the only way I can
9 remember pretty much where we were at was because
0 that bulletin board is halfway down the hall. The
1 bathroom's right across the hall.

2 Q. Uh-huh.

3 A. And we were halfway to the bathroom,
4 is what I'm thinking or something. And I'm
5 thinking, you know...

6 Q. Okay.

7 A. To me, to be honest with you, I'm
8 probably thinking I'm safe when I hit that
9 bathroom because there's girls there, you know.
0 Not to make it sound -- but I know that they'll
1 have my back. You know what I mean? If I look at
2 one of these girls or scream out, they're going
3 to, you know, because we're inmates. Okay?

4 And it's real weird because he must
5 have been forcefully -- I mean it must have looked

1 pretty abrupt or something when I was coming down
2 the hall, because people just -- the girls just
3 went around us. They took me directly down the
4 center of the hall. I'll never forget that.

5 Like his whole attitude is just
6 insane. I was around the man for probably, what,
7 a whole 15 minutes of my life.

8 Q. You haven't seen him in the facility
9 since?

10 A. No. No, I haven't. I don't know.

11 Q. Do you know anybody else who has seen
12 him?

13 A. No.

14 Q. I mean been treated by him at the
15 facility at all?

16 A. No, I do not know anybody.

17 Q. Okay.

18 A. No.

19 MR. LAKASKEY: Do you have any questions?

20 MR. WOLFE: A couple.

21

22 EXAMINATION

23 BY MR. WOLFE:

24 Q. Norma, I think for the record, my name
25 is Steve Wolfe, and I work for the Department of

1 Corrections in the Office of Professional
2 Standards. And my purpose is to investigate
3 potential employee misconduct and look for the
4 presence or absence of any kind of misconduct.

5 Do you give your permission for me to
6 record your statement today?

7 A. Yes.

8 Q. And I've been in the room during the
9 course of the interview with the detective from
0 the sheriff's department, but I just have a couple
1 of follow-up questions.

2 Would that be all right?

3 A. Yes.

4 Q. Okay. You say that you arrived on
5 November 13th of 2003, correct --

6 A. Yes.

7 Q. -- to the South Boise Correctional
8 Center?

9 Had you ever seen Dr. Noak prior to
0 that time?

1 A. No.

2 Q. Okay. And the date that this incident
3 happened, on or about January 30th, that was the
4 only time you had seen him?

5 A. Yes.

1 Q. Okay. And when you were transported
2 to the hospital on the 29th to Saint Al's, you
3 indicated that you were given a drug for pain.

4 Do you remember what kind of drug that
5 was? You said it was Dilaudid?

6 A. Dilaudid.

7 Q. Dilaudid. Is that what they told you
8 at Saint Al's?

9 A. Yeah, they --

10 Q. And what was the reason for that drug?

11 A. Because of the amount of pain that I
12 was in.

13 Q. Okay. And what is your belief was
14 causing that pain?

15 A. I believe it was my kidney.

16 Q. Okay.

17 A. My right kidney.

18 Q. Okay. On the day that you saw
19 Dr. Noak, you said earlier that you didn't want to
20 be in the room with the doctor and that he
21 appeared to be antsy the first few minutes that
22 you arrived.

23 Why didn't you want to be in the room
24 with him? What was going on specifically that
25 caused you to have this feeling?

1 A. I -- I don't have very good
2 terminology -- work terminology. The way he --
3 gosh, just the way he talked to the ladies. Just
4 the way he sat at that desk like he was God. But
5 I'm sorry, a girl shouldn't --

6 Q. That's okay. You know, I understand,
7 you know, that you -- you know, I don't want there
8 to be any barriers to language communication here.
9 So just use the language that you're familiar
10 with.

11 A. He sat at the desk in that examining
12 room, and he just -- I mean just in the manner
13 that he sat there, he was using some kind of -- to
14 me -- I don't know. He was -- he was not very
15 nice. He was a very rude man, you know. He'd
16 walk in the room and you could not -- you know,
17 walking in here with you two sitting here, at
18 first when I came in this room I was going to ask
19 for a female.

20 Q. I understand.

1 A. I'll be honest with you.

2 Q. Okay.

3 A. Okay? It didn't take me but, what,
4 three minutes I was trusting. That was the first
5 couple minutes, I was looking at both of you like,

1 hmm, what's up.

2 Q. Well, I understand there's some --

3 A. But I'm trying to -- when I was in
4 that room with that man for less than a minute.

5 Q. Do you recall what he was wearing that
6 day?

7 A. A white shirt and tan pants, maybe.

8 Q. Okay. Do you remember what he looks
9 like?

10 A. Short, blonde hair with glasses.

11 Q. Okay. During the course of that
12 medical examination -- well, let me ask you this.

13 Have you ever -- prior to being in the
14 institutional setting or prior to being an inmate,
15 have you ever seen a doctor before?

16 A. Yes.

17 Q. And when you went to the doctor, what
18 were your expectations?

19 A. Well --

20 Q. Why would you go to a doctor?

21 A. -- because I wasn't feeling well. I
22 would expect a little respect and the fact that
23 they were there to understand and help figure out
24 what would be wrong with me.

25 I have scars and plates all up my

1 shoulder. I've had my gallbladder removed. I've
2 had twin boys. So yeah, I've been around
3 physicians like, you know, back for -- yes. And I
4 don't know what you're asking, I guess.

5 Q. Well, I'm asking what you expected
6 when you went to the doctor.

7 A. I expected to be treated fair with --

8 Q. Okay.

9 A. As a human being, is what --

10 Q. Okay. In your opinion, did you get
1 that on this particular day?

2 A. No, sir.

3 Q. Did you feel in any way threatened as
4 a result of the contact that you had with the
5 doctor or any of the medical staff?

6 A. Yes, sir.

7 Q. And how did you feel threatened?

8 A. I felt threatened immediately in the
9 room when he forced me to breathe deeper, when
0 even the nurse -- he wouldn't even have it from
1 the nurse that I was in so much pain and it hurt
2 for me to breathe that deep. And he didn't -- he
3 didn't care. He just -- it was his way or no way.

4 And then when he called the P.A.
5 names, that was enough to make me shake. And I

1 was laying on that bed. I mean I just wanted out
2 of there. I mean I requested to leave the room.

3 Q. And one of the names that you had
4 mentioned was "invalid."

5 A. Yeah.

6 Q. Is that what you understood him to
7 say?

8 A. I understood him calling her stupid,
9 the word that I was thinking he used. You got to
10 understand I was, you know -- but I do know that
11 he did call her a name and he was referring to her
12 being stupid for not having that chart. He
13 referred at the same moment -- when he called her
14 that name, he said, "Oh," he said, "if the P.A.
15 wasn't doing her job -- if the P.A. was doing her
16 job, I wouldn't even have to be here." And then
17 he called her a name (unintelligible).

18 Q. Okay. Could I ask you to speak up
19 loudly for the recorder, please?

20 A. Oh, yes.

21 Q. A couple more questions and then I'll
22 be done.

23 Did you ever sign any kind of
24 authorization form for Dr. Noak to examine you at
25 all?

1 A. I don't -- I don't know. I think once
2 we signed one with the facility in the beginning,
3 it goes for anything. I don't think they have us
4 sign one, you know, every time we go down there or
5 something.

6 Q. Okay. And you had mentioned about
7 being -- and I don't want to put words in your
8 mouth, but being sent back to Pocatello.

9 Who said that to you?

0 A. Dr. Noak.

1 Q. Did you form the impression or do you
2 have the belief now that he has the authority to
3 send you back to Pocatello?

4 A. From what he -- the way he threatened
5 me going down the hall, that he would send me back
6 to Pocatello if I did not go right now. I would
7 be just -- I still haven't gotten to the bottom of
8 that, if he does have that pressure pull. I would
9 think yeah, that he must have that pull because he
0 threatened me with that, you know. I mean why
1 would he threaten me with that if he couldn't do
2 it? is what I'm thinking.

3 Q. And final question: Have you heard of
4 any other complaints regarding Dr. Noak?

5 A. No. From here at this institute? No.

1 Q. From any institution?

2 A. No.

3 MR. WOLFE: Okay. That's all I have.

4 MR. LAKASKEY: Just to touch back.

5

6 FURTHER EXAMINATION

7 BY MR. LAKASKEY:

8 Q. You said you had took medication over
9 at the hospital.

10 Do you recall what medication you were
11 prescribed from the hospital and you were supposed
12 to be taking here after you left the hospital?

13 A. I believe I was supposed to be taking
14 just a Darvocet and a Flexeril and something for
15 the nausea. But only on two occasions did I take
16 the Darvocet, and that was at the very beginning,
17 until I realized what it was, and then I refused
18 it. And --

19 Q. That was after you got back from the
20 hospital?

21 A. You know, that they prescribed that
22 before I went to the hospital.

23 Q. Okay. I guess my question is, were
24 you under the influence of any medication --

25 A. No.

1 Q. -- when you came down and saw him?

2 A. No, sir.

3 Q. So the dizziness or the illness that
4 you felt here was more of internal pain rather
5 than any medication that you could have been given
6 at the hospital or here?

7 A. Yes, sir. Yes, sir. I was -- I was
8 not on any medication. I had not taken anything
9 for that.

0 Q. Okay.

1 A. Yeah, I was not on medication.

2 Q. Okay.

3 A. From point A I did not want any
4 medication.

5 Q. All right.

6 A. And when they gave it to me at the
7 hospital, it was pretty much a -- that was the
8 only time like that. But no, the answer would be
9 no, I was not on medication at that point.

0 Q. Okay. When they called you down --
1 after coming down to get your blood pressure,
2 checked you, went back to your room, and they
3 called you down again, what was going through your
4 mind?-----

5 A. I was trying -- me and Shelli were

1 trying -- Shelli? -- Ms. Skinner, my roommate,
2 were trying to figure out why I was coming back
3 down.

4 Actually, I was thinking, Oh, no,
5 something came back on that blood work.

6 Actually, we didn't say too much. But
7 we were like, "Wow, what's going on?" Do you know
8 what I mean? Curious, because I had just left
9 there.

10 Q. Did they ever explain to you why you
11 came back?

12 A. Yeah. To see Dr. Noak. He was here
13 to see me.

14 Q. Was he present -- you said there was
15 like a 5 minute or a 15 minute -- what was it, 5
16 or 15 minutes from the time you first left after
17 getting your blood pressure checked from -- and
18 you were called back, about how much time?

19 A. I don't know. 15, I guess, if you
20 want to be safe.

21 Q. Was he there at your first visit,
22 then?

23 A. No.

24 Q. Okay.

25 A. But there are two examining rooms.

1 Q. Okay.

2 A. So I don't know if he was here --

3 Q. Okay.

4 A. -- or not. But he wasn't -- nobody
5 even acknowledged him. And the only time I even
6 heard anything about him was when they were trying
7 to get me into the hospital. And they never --
8 you know, it was -- they were just saying they
9 were waiting for the doctor to call. The doctor
0 was going to come in. They were all waiting for
1 the doctor to call. And then they took me to the
2 hospital, and he never -- to me, you know, it was
3 like -- and I only seen the P.A. a couple of times
4 here. So I mean I don't think I -- I think I just
5 always assumed maybe it was her that was supposed
6 to come back in or --

7 Q. But you don't know if that was the
8 doctor they were talking about, Dr. Noak --

9 A. Right.

0 Q. -- about getting to the hospital?

1 A. Right.

2 Q. All right. Is there anything else
3 that you can add before we finish up here?

4 A. Can I ask you guys some questions?

5 Q. Sure.

1 A. I mean about him. I mean is he a
2 doctor for our facility? I don't even know where
3 this man comes from. Okay? I think that would
4 help me a lot.

5 Q. I know nothing about him. I haven't
6 even met him yet, so I can't answer any of the
7 questions regarding him.

8 MR. WOLFE: And I can. He is a doctor for
9 the contract provider for the Department of
10 Corrections.

11 THE WITNESS: Okay. And what does that
12 mean?

13 MR. WOLFE: Well, most of the medical
14 people here, most, if not all -- and I'm new to
15 the department so I'm just learning this stuff.
16 But most, if not all of them, are not employees of
17 the Department of Corrections. They're contract
18 employees..

19 THE WITNESS: Okay.

20 MR. WOLFE: Which means they work for a
21 contractor that provides services to the
22 Department of Corrections. And we have doctors
23 and physician's assistants. That's what P.A.s
24 are, physician's assistants. They can prescribe
25 medicines and do all that stuff. They're not

1 fully licensed doctors. They're just one step
2 below, if you will. They're supervised by
3 doctors.

4 THE WITNESS: Okay.

5 MR. WOLFE: Okay? So yes, he is a contract
6 provider of medical services, if that makes you
7 feel any better.

8 THE WITNESS: Yeah, I mean through this --
9 and maybe you guys should know, because I want
0 everything out in the open. I don't want anybody
1 to say I was trying to hide anything that first
2 week. I still have a hard time dealing with this.
3 I don't know what I did to this man to deserve
4 what he did. But that first week I was really
5 having difficulties to where, oh, at least once a
6 day I was up at staff.

7 Because -- because of the staff here,
8 since my first day here -- I mean I work hard for
9 this place. I mean have, you know, 300 hours of
0 volunteer work. That comes from within because of
1 the way the staff is. You know, you give back
2 what you get. I've got nothing but respect from
3 the staff here. And even through this.

4 And I do know better than to
5 breathe -- you know, say anything on the tear.

1 These girls are (unintelligible). And so it's
2 really difficult for me to not be able to talk to
3 anybody about it.

4 So I would get upset. I wouldn't even
5 tell my roommates. I would just go straight up to
6 staff. I have talked to -- I have told my
7 counselor I'm building healthy relationships,
8 because I'm having a difficult time in that class
9 because of this. He'd say, "Be safe. You can be
10 safe here."

11 Well, I'm looking at him going, Well,
12 if you had known what just happened to me
13 yesterday, you know. But anyways. So I'm
14 really -- and I'm trying to figure this out, and a
15 lot of it is maybe if I could get some feedback
16 on, you know, anything that's going on, because
17 this is over a week of me just sitting here not
18 being very patient with everybody.

19 The lieutenant here, she has been
20 awesome. There isn't one (unintelligible) the
21 staff hasn't been there for me for this. And
22 they're very understanding and concerned.

23 But I need -- and I don't know who I
24 can and can't talk to, because I don't know what
25 the proceedings are. And I don't want anything to

1 come back on this place because these people here
2 have a lot of heart and they have a lot of
3 concern.

4 Do you see what I'm trying to ask?
5 I'm really confused on who I can and can't talk
6 to. But I need to talk to somebody because --

7 MR. WOLFE: Can I answer that question?

8 MR. LAKASKEY: Yeah, go ahead.

9 MR. WOLFE: Okay. There's really two
10 things going on here right now in this room.

1 THE WITNESS: Okay.

2 MR. WOLFE: Obviously, we're taking this
3 seriously or we wouldn't be here.

4 THE WITNESS: Okay.

5 MR. WOLFE: You've got a detective from the
6 Ada County Sheriff's department here and somebody
7 from headquarters that thinks that it's worthy
8 enough to investigate to determine the presence or
9 absence of any type of criminal or misconduct.

0 THE WITNESS: Uh-huh.

1 MR. WOLFE: Okay? Now, as far as the
2 criminal aspect, the detective's going to be
3 handling that. Okay?

4 As far as the Department of
5 Corrections, I'm going to be handling that.

1 Now, as far as who you could talk to,
2 basically you can talk to anybody at the sheriff's
3 department in the course of their investigation.
4 But as far as staff members here, about the only
5 people you can talk to are me and maybe a
6 counselor or maybe --

7 THE WITNESS: Okay.

8 MR. WOLFE: -- the facility manager here.
9 But I don't want you discussing this with anybody
10 because it is an active investigation. And policy
11 indicates that you're not supposed to discuss it
12 with anybody, unless they're relevant to the
13 investigation. And that's very important because
14 we don't want to have a bunch of rumors going
15 around. That will make things worse.

16 THE WITNESS: And that's why I've been
17 stopping that for this facility. And it's just
18 really difficult.

19 MR. WOLFE: I understand that. But I'm
20 going to leave you with one of my cards, and you
21 can call me. You can talk to me anytime you'd
22 like.

23 I'm sure the detective has some kind
24 of contact number that you can contact him.

25 THE WITNESS: Okay.

1 MR. WOLFE: But it's going to take its
2 course. It's going to go through the
3 investigative process. We're going to interview
4 other people besides yourself. And a report will
5 be submitted from both sides, from my point of
6 view and from the sheriff's department's point of
7 view, and determinations will be made of how to
8 move forward with this case.

9 Okay?

0 THE WITNESS: Okay.

1 MR. LAKASKEY: You do have access to a
2 counselor here, I assume?

3 THE WITNESS: Yes. Donna seen me last
4 Saturday on this.

5 MR. LAKASKEY: Okay.

6 THE WITNESS: In fact, she
7 (unintelligible). Just I can only see her every
8 now and then. And even that I need a -- I
9 think -- and I guess I'm not (unintelligible). I
0 guess I was right in this aspect because, you
1 know, they're encouraging me -- and I hope this
2 isn't going too far, to do this on
3 (unintelligible). I don't know what to do, what's
4 right or what's wrong. I don't want to step on
5 anybody's toes or not.

1 But I know that I need to talk to
2 somebody about it. And being in the dark about it
3 is really making me where I'm at today with this
4 crying and stuff. And this happens a couple of
5 times a night, you know. And not knowing is the
6 worst thing.

7 MR. LAKASKEY: For the criminal aspect of
8 this, what's going to happen is, like he said,
9 we're going to talk to a few more people. I'm
10 going to try to talk to the doctor also, get his
11 side of the story. And I'm going to route what I
12 have to the prosecutor.

13 And if they feel that, you know, they
14 can win the case in court, they'll either subpoena
15 him or they'll issue a warrant for his arrest.
16 That's how things are done on our end.

17 At the time -- you know, if the
18 deputy's going to receive enough information at
19 the time they took the report, they probably could
20 have cited him, given him a ticket to appear in
21 court. But since this is a little bit more in
22 depth here, I'm kind of glad that they forwarded
23 it to me so I can, you know, get everybody's side
24 of the story and present that to the prosecutor.

25 A lot of times the prosecutor will --

1 you know, if they can't prove it beyond a
2 reasonable doubt, then they may not take the case.
3 But it sounds like -- I mean there's a couple, you
4 know, medical staff here that I already know that
5 they basically confirm your story or the account
6 of it. And, you know, we'll have to see what the
7 doctor says too.

8 But that's why I asked you if you were
9 willing to come back, because more than likely,
0 you know, if he -- if he is subpoenaed or
1 arrested, his trial won't happen before April 4th.
2 It takes awhile. I mean it may, but if we have to
3 track down people to talk to, it could take a
4 little bit longer before everything is sent to the
5 prosecutor's office.

6 THE WITNESS: So this is going to, I mean,
7 drag out that long? I mean does he know -- does
8 he even know that this is going on? Does he have
9 any idea that we're --

0 MR. WOLFE: He knows that there's an
1 inquiry taking place. He doesn't know how in
2 depth it is, but he knows there's an inquiry in
3 progress.

4 MR. LAKASKEY: And, you know, I'm
5 thinking -- I'm thinking February is over, but it

1 just started. It depends on how -- you know, if I
2 can talk to these people by the end of next week,
3 it will be on the prosecutor's desk, and maybe in
4 two weeks or something, something may happen.

5 But as you're aware, with the court
6 system, a lot of people will plead not guilty so
7 they spend some time and look at the case a little
8 bit more rather than pleading guilty and getting
9 the whole thing over with.

10 THE WITNESS: Uh-huh.

11 MR. LAKASKEY: You know, if he gets ahold
12 of an attorney and they want to do that, they have
13 that right to. And by postponing it, it kind of,
14 like you said, drags along. Certainly that's what
15 could happen in this case too.

16 So -- but, you know, here's my card
17 with my number. And, you know, if you have any
18 questions, I can -- I can tell you what I know,
19 what I can release to you. And basically, you're
20 the victim in this and, you know, your testimony
21 is real important to this case.

22 THE WITNESS: And I'll be there. I mean,
23 you know, there's a little girl right across the
24 hall. And she's 22. And she was so -- and every
25 time I see her, I just think that if he would have

1 done this to her, if he would have
2 (unintelligible) and it would have been her,
3 what -- I mean I'm a lot stronger than her, you
4 know.

5 And is he doing this to other people?
6 I mean he wasn't acting like it was just a bad day
7 for him.

8 MR. LAKASKEY: That's why we asked if you
9 heard any other complaints about him.

0 THE WITNESS: I don't know
1 (unintelligible).

2 Q. (BY MR. LAKASKEY): Okay. I know this
3 happened almost two weeks ago.

4 Are there any marks on your arms from
5 that incident?

6 A. You know, that nurse -- you know,
7 there was a bruise here from his finger. It's
8 still a little bit there. Do you know what I
9 mean? I mean -- but there was a bruise there from
0 his finger right here.

1 And the first time that they checked
2 it, that night she checked it like right when I
3 came down and made a complaint.

4 Q. Uh-huh.

5 A. And it was like a little red. But

1 then we had stuff all over me, and I couldn't look
2 on the back here. But yeah, this turned like an
3 ugly yellow, you know.

4 MR. WOLFE: Did the staff take any
5 photographs?

6 THE WITNESS: No, everybody just kind of --
7 as a matter of fact, they asked me, and I said no,
8 because, to be honest with you, when the nurse
9 asked me -- there was another that was in there,
10 and she wrote it all down. I figured that's what
11 was going to be going down. See what I'm saying?

12 As an inmate, I figured they already
13 asked me once, and that was -- I think the
14 lieutenant seen it, and then they thought maybe it
15 was from an IV. Do you know what I mean? But it
16 was nowhere near my IVs down here or down here,
17 and I didn't bruise from those, and I had IVs all
18 over the place. And -- but that really bothered
19 me.

20 And, you know, being an inmate, we
21 don't know what our rights are. And, you know, I
22 can say things, (unintelligible) -- you know,
23 maybe I just needed to tell somebody just to get
24 it off my chest. And whether it's noted or not,
25 it's just to know that this man is not going to be

1 doing anything to anybody else.

2 MR. LAKASKEY: Uh-huh.

3 THE WITNESS: I mean I'm in rehab. And if
4 this would have happened to me yesterday and I was
5 getting out today, what do you think would
6 happen -- I know what would happen to me stepping
7 out on that street, the angry -- and, Well, gosh,
8 if I can't be safe in that facility, where can I
9 be safe? What difference does it -- I would have
10 relapsed. I would have relapsed. And you know
11 what? I've been locked up now for nine months.

12 And I made some goals, and I haven't
13 (unintelligible) that was marked checked by the
14 instructor. And today -- and I plan on keeping
15 those goals.

16 MR. LAKASKEY: Okay.

17 THE WITNESS: And this would have brought
18 me down. If I wasn't still in this facility to
19 deal with it, I would have walked out and said I'm
20 going on a binger or something. If it would have
21 just happened to be my out-date, go to court, I
22 would have lapsed. I am angry. I am so angry at
23 this man because -- you know, I ain't going to
24 lie. When I was out on the street doing dope, it
25 was a lie. I probably would have just, you

1 know...

2 MR. WOLFE: Let me ask you another
3 question.

4

5 FURTHER EXAMINATION

6 BY MR. WOLFE:

7 Q. Has anybody from the medical staff
8 made any attempts to contact you about this
9 incident or indicated to you as to what you should
10 say or anything like that?

11 A. Janna contacted me yesterday.

12 Q. Right.

13 A. I think it was yesterday. And that
14 was probably because -- she reassured me that I'm
15 a bright girl. You know, "You're going to be
16 okay." Because I have this part in me with this,
17 and that -- she stood beside my bed for 20 hours
18 for three days. She would not leave this facility
19 because she was concerned.

20 Q. You mean after this happened?

21 A. No, before this happened.

22 Q. Okay.

23 A. She was by my bedside the whole time.
24 (Unintelligible) would not leave. She would call
25 and make sure I was okay, just because of who she

1 is. And I don't even know who she is. Like I
2 told you, I don't take meds of any sort, so I
3 don't deal with medical staff here.

4 And when I seen is this man grab her
5 the second time, if I wouldn't have been as weak
6 as I was, I probably would have -- I probably
7 would have hit him. I probably would have
8 backhanded him. I probably would have lashed out
9 at him in a way that, you know -- or I don't know.
0 The old me would have. Okay? The old me would
1 have lashed out at him. "What are you doing?"

2 I mean the first time he grabbed her
3 was, you know, whatever. But the second time, you
4 know, the second time he grabbed her and made her
5 forcefully let go of me, when he made me walk away
6 with him and when those ladies refused to help,
7 when they were -- they knew what they were seeing.
8 They -- you know, to me, I let her down. I let
9 Janna down.

0 I felt really guilty because
1 (unintelligible). You know, there could have been
2 something I could have done to stop this before it
3 accelerated as far as it did. I mean I would have
4 stopped it in the room if you think about it. You
5 know, when he was bashing people with names or

1 whatever, I could have stopped it then, couldn't I
2 have? You know, why didn't I?

3 And so that's where what I was talking
4 to the staff about here is I had some
5 (unintelligible). I don't think this happened. I
6 guess because she works somewhere else.

7 Q. Well, have you been threatened or
8 forced in any way to come and talk to us today?

9 A. No. No.

10 MR. LAKASKEY: I think that's it. I think
11 we'd like to talk to some other people, and we'll
12 get the ball rolling on this.

13 From this side here, you know, it
14 seems like there's enough there for a case. And
15 I'll present all that to the prosecutor. And feel
16 free to give me a call, and I'll tell you what I
17 know about the case. A lot of times I don't know
18 until I receive a subpoena or something myself for
19 it.

20 But, you know, if you change your
21 address or anything like that, please give me a
22 call, and so I can let the prosecutor's office
23 know. So if there is a trial or anything like
24 that, we can go ahead and properly inform you of
25 when it's going to be. And, you know, we'll need

1 you. Okay?

2 THE WITNESS: I want to thank both of you.

3 MR. WOLFE: You're quite welcome.

4 This concludes the interview of Norma
5 Hernandez at approximately 3:15 on February 11th,
6 '04.

7 (Interview concluded.)

8 -oOo-

9

0

1

2

3

4

5

6

7

8

9

0

1

2

3

4

5

REPORTER'S CERTIFICATE

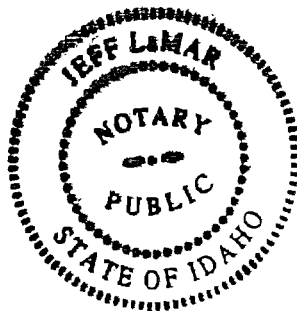
STATE OF IDAHO)
) ss.
COUNTY OF ADA)


I, JEFF LaMAR, Certified Shorthand Reporter
and Notary Public in and for the State of Idaho,
do hereby certify:

That I transcribed the foregoing audiotaped
interview to the best of my ability;

I further certify that I have no interest
in the event of the action.

WITNESS my hand and seal this 29th day of
July, 2009.





Jeff Lamar
CSR and Notary Public in
and for the State of Idaho.

My Commission Expires: December 30, 2011

EXHIBIT 14
ADA COUNTY SHERIFF'S DEPARTMENT
INVESTIGATION REPORTS

000739

00122271517

GENERAL REPORT

Page 1 of 3 042

Associated Reports

- ☐ DUI
☐ Domestic
☐ Property Injury
☐ Missing Person
☐ Case Study
☐ Signature Form
☐ Witness Statement
☐ Vehicle Disposition
☐ Probable Cause/Supplemental
☐ CSI

- ☒ ADA CO. SHERIFF
☐ BOISE POLICE
☐ AIRPORT POLICE
☐ MERIDIAN POLICE
☐ GARDEN CITY POLICE

General Report Type

- ☒ Initial
☐ Supplemental

RD 146 DRI 17256

OFFENSES

Date & Time: 1/30/04
 Date & Time Reported: 1/30/04
 Location of Occurrence: 13200 Pleasant Valley Rd Boise, ID 83634
 Location Code: 18-903
 Offense Group: Battery
 Law Section No.: 18-903
 Count: 1
 Warrant / Hold: ☐ Felony
☐ Misdemeanor
☐ Infraction
 Type Activity: ☐ Hate Bias
 Law Section No.:
 Count:
 Warrant / Hold: ☐ Felony
☐ Misdemeanor
☐ Infraction
 Type Activity: ☐ Hate Bias
 Law Section No.:
 Count:
 Warrant / Hold: ☐ Felony
☐ Misdemeanor
☐ Infraction
 Type Activity: ☐ Hate Bias

Officer Involved

ADA No. ☐ Audio Recording ☐ Video Tape
 Officer Involved: ☐ ADA No. ☐ Audio Recording ☐ Video Tape

VICTIM

Name: Hernandez, Norma R.
 Nickname / AKA:
 Race: W Sex: F Age: 37 HT: 502 WT: 143 Hair: Bk Eyes: Bk
 Residence Address: 13200 Pleasant Valley Rd Boise, ID 83634
 Residence Phone: O.L.N.
 State: Using ☐ Drugs
 Business Address / School: Women's Correctional Facility
 Cell Phone: ☐ Computer ☐ Alcohol
 Relationship Type:
 Occupation: Janitor
 Business Phone: How Identified:
 Injury Type: Victim Type:
 Additional Info/Weapon/Clothing/etc.: Housed here until 4/04/04
 Vehicle Year: Make: Model: Body Style: Color: License No.: State: ☐ Cited ☐ Arrested
 Summons/Warrant No.:

WITNESS

Name: (See narrative)
 Nickname / AKA:
 Race: Sex: DOB: Age: HT: WT: Hair: Eyes:
 Residence Address: Residence Phone: O.L.N. State: Using ☐ Drugs
 Business Address / School: Cell Phone: SSN: ☐ Computer ☐ Alcohol
 Relationship Type:
 Occupation: Business Phone: How Identified:
 Injury Type: Victim Type:
 Additional Info/Weapon/Clothing/etc.: ☐ Cited ☐ Arrested
 Summons/Warrant No.:

SUSPECT

Name: Noak, John E.
 Nickname / AKA:
 Race: Sex: DOB: Age: HT: WT: Hair: Eyes:
 Residence Address: Residence Phone: O.L.N. State: Using ☐ Drugs
 Business Address / School: Cell Phone: SSN: ☐ Computer ☐ Alcohol
 Relationship Type:
 Occupation: Business Phone: How Identified:
 Injury Type: Victim Type:
 Additional Info/Weapon/Clothing/etc.: ☐ Cited ☐ Arrested
 Summons/Warrant No.:

SUSPECT VEHICLE

Suspect Vehicle Year: Make: Model: Body Style: Color/Color: License No.: State:
 Approximate Suspect Vehicle Identification VIN: Owner: ☐ Left at ☐ Towed by:

PROBABLE CAUSE

Doctor John Noak intentionally battered Norma Hernandez by forcefully grabbing her right arm. Doctor Noak's actions were against Norma's will.

STOLEN PROPERTY

Property Value: Description:

ADMINISTRATION

Official Reporting: 4576
 Reporting Person's Signature: Norma Hernandez
 Routed DIR #s:
 Supervisor Approving: ☐ Phone Report ☐ Audio Recording ☐ Court Checked ☐ Door Locked ☐ Routed to: ☐ Counter Report ☐ Video Tape ☐ Seat Belts
 Copies to: ☐ City Prosecutors ☐ County Prosecutors ☐ Domestic Violence Unit
 Original - Records - Yellow - Follow-up - Pink - MIBS - Gold - Crime Analysis - Ada County / Gang Unit - BPD

000740

BPD001-0402

ACSD0002

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Subject/Victim's Name Hernandez, Norma R.		3. S.D. 135	4. DE No 17256
5. Address 13200 Pleasant Valley Rd. Boise, ID 83634			6. Phone 334-2731		7. Page 2 of 3
8. Date 1/30/04	9. Time Occurred Afternoon	10. Route To Detectives	11. Division Patrol		

PERSONS INVOLVED:

- 1) Lieutenant Christy Presley, Work Release Center # 334-2731, home # 398-8646, cell # 573-5605.
- 2) Janna Nicholson, Work Release Center # 334-2731, home # 375-8079, work # 336-1260 ext. 5341.
- 3) Karen Barrett, Work Release Center # 334-2731
- 4) Doctor John Noak, unable to confirm personal information at the time of call.

INITIAL RESPONSE:

On 2/05/04 at 1803 hours I was dispatched to the Community Work Release Center at 13200 Pleasant Valley Rd. to take a battery report. Sgt. Finley was calling in behalf of inmate Norma Hernandez who wanted to file the report.

INITIAL CONTACT:

Upon arriving at the Work Release Center I spoke with Sgt. Finley. Sgt. Finley stated Norma requested a battery report be filed on an incident she had with Doctor John Noak on 1/30/04. Sgt. Finley had Norma meet us in the conference room to talk.

When Norma arrived I asked her to explain to me what had happened. Norma stated the week earlier she had been feeling sick. She had put a request in to see the doctor. Friday afternoon Norma was taken to see Doctor Noak at the in-house medical department. Norma stated Doctor Noak appeared to be upset due to the firm way in which he talked to her. Norma then said as she was leaving her appointment she became very weak and dizzy. Medical assistants Janna Nicholson and Karen Barrett noticed this and grabbed onto Norma's arms to help her back to her room. Norma said as they were walking her back to her room Doctor Noak came up from behind them and pulled Janna's arm off of Norma. Norma stated Doctor Noak gripped her right arm very tight and said he would walk her back to her room alone. Norma said she felt scared and in pain by the way Doctor Noak was holding her arm but she didn't want to say anything to him. As Doctor Noak was escorting her back to her room Doctor Noak told her, that if she didn't "heal quickly" she would be sent back to Pocatello to finish her time and "it would be a lot harder there." As they reached Norma's room the Doctor kicked the door open and forced her into the room and left. Norma said she filled out a statement and gave it to Lt. Christy Presley.

OFFICER'S OBSERVATIONS:

I did not observe any bruises on Norma's arm.

Reporting Officer / Serial / Date/Time D. Jensen 4576	Supervisor Approving / Serial / Date/Time <i>[Signature]</i> 2208 2/8/04
---	--

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

AG800741

00122221517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident Title		2. Subject/Victim's Name		3. R.D.	4. DE No
Battery		Hernandez, Norma R.		135	17256
5. Address			6. Phone		7. Page
13200 Pleasant Valley Rd, Boise, ID 83634			334-2731		3 of 3
8. Date	9. Time Occurred	10. Route To	11. Division		
1/30/04	Afternoon	Detectives	Patrol		

OFFICER'S ACTIONS:

I spoke to Sgt. Finley and she gave me a copy of Norma's statement. I got the phone number of Lt. Christy Presley who had already left for the night. Sgt. Finley stated Lt. Presley has statements from both of the medical assistants that witnessed the incident. Sgt. Finley further stated that an internal investigation had been completed and all of the reports and statements were with Lt. Presley.

FURTHER INFORMATION:

Later in the evening on 2/05/04 I received a voice mail from Janna Nicholson in which she left me her home phone number and work number. I was unable to speak to Janna further about the incident at that time. On 2/06/04 I notified Sgt. Devries of the situation and he requested that we contact Detectives for further investigation into this incident. Deputy Ryan left a message on Lt. Scown's voice mail in reference to the request. No further information at this time.

ATTACHMENTS:

A copy of Norma Hernandez's statement.

Reporting Officer / Serial / Date/Time	Supervisor approving / Serial / Date/Time
D. Jensen 4576	

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

AC000542

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

042
JHT

1. Incident Type Battery		2. Subject/Victim's Name (S) Noak, John		3. PD	4. DR No 17256
5. Location Address 13200 Pleasant Valley Rd, Boise, Idaho 83634		6. Phone		7. Page 1	
8. Date Reported	9. Time Occurred	10. Route To		11. Division Detectives	

Suspect: Noak, John F.; 24924 Market Road, Parma, Idaho 83628; White, Male, 6'01", 180 lbs, Gray hair, Blue eyes; DOB [REDACTED], SSN [REDACTED] (C) 250-7478. Employer: Prison Health Services.

Victims:

Hernandez, Norma R.; Current residence: 13200 Pleasant Valley Road, Boise, Idaho 83634; Residence after 040404: 295 Lois Street, Twin Falls, Idaho 83301 (208) 733-6236; Hispanic, Female, 5'02", 148 lbs, Brown hair, Brown eyes; DOB [REDACTED]; SSN [REDACTED]

Nicholson, Janna Beth; 3375 N. Jones Place, Boise, Idaho 83704; (H) 375-8079, (W) 336-1260 ext. 5341; DOB [REDACTED]; SSN [REDACTED]

Witnesses:

Barrett, Karen; 2619 N. Silverleaf Way, Meridian, Idaho 83642; (H) 855-9323, (W) 334-2731.

Jackson, Todd; 341 E. Scops Owl Drive, Kuna, Idaho 83634; (W) 334-2731.

On 021104, I received DR 17256 for investigative follow-up. This case involves a misdemeanor battery on an inmate and a Correctional Medical Specialist (CMS) at the South Boise Women's Correctional Center (SBWCC) by Dr. John Noak, a doctor with Prison Health Services (PHS). PHS is contracted with the Idaho Department of Correction for medical services. The CMS involved is Janna Nicholson and the inmate involved is Norma R. Hernandez.

Deputy Dennis Jensen (Ada #4576) took the initial report on 020504. In his report, Deputy Jensen stated that Nicholson was assisting Hernandez, who was weak and dizzy, when Noak pulled Nicholson's arm off of Hernandez and grabbed Hernandez. He then escorted Hernandez back to her room. Hernandez told Deputy Jensen that Noak gripped her right arm very tight. She said she felt scared but didn't want to say anything to Noak. Because Deputy Jensen had a number of days off following his taking of the initial report, he requested that a detective be assigned to the case for follow-up.

On 021104, I called SBWCC and talked to Lieutenant Christy Presley to ask her for copies of the reports submitted by officers and medical staff in regards to this report. Lt. Presley told me I needed to get in touch with Steven Wolf, investigator for the Idaho Department of Correction. I called Wolf and asked him for a copy of the report and told him I was going to SBWCC to interview Hernandez and Nicholson. He said he would provide me with a copy of the report and asked if he could sit in on the interview, as he was investigating the incident internally. I told him that would be fine and that I would meet him at 1330 hours at SBWCC.

Reporting Officer / Serial / Date/Time Detective D Lukash/2594/022304/0950	Supervisor Approval / Serial / Date/Time  2133
---	---

ACSD Detective Supplement 1/07

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000743

ACSD0005

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Type Battery		2. Subject/Victim's Name (S) Noak, John		3. PD	4. DR No 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634				6. Phone	7. Page 2
8. Date	9. Time Occurred	10. Route To	11. Division Detectives		

At approximately 1330 hours, 021104, I met with Wolf and he gave me a packet of statements written by Correctional Officer Todd Jackson, Physician Assistant Karen Barrett, CMS Nicholson, and Hernandez. Included was an Incident Report. I have attached those documents to this report.

Wolf and I first met with Hernandez. We introduced ourselves, each told her which agency we were from, and what we each were investigating. Hernandez was asked if the interview could be audio recorded and she said that would be all right. I began the interview and asked her to tell me what had happened leading up to 013004, the date the battery occurred.

Hernandez told me that she had been sick a few days prior to 013004. She said she was experiencing back pain and that she couldn't get out of bed. She believed she first informed the medical staff of her problem on 012704. She said she was seen by PA Barrett and learned that her blood pressure was fluctuating. Hernandez said that on 012904, she was transported to St. Alphonsus Hospital, in Boise, because of the pain. She thought it might have had something to do with her kidney. She said that "they" (I later found out that permission was granted by Dr. Noak) got permission to transport her to the hospital. Hernandez said it was around 0330 hours, 013004, when she returned to SBWCC. I asked her about medication she received and she said she was given Dilaudid. She said she had kept refusing medication in fear she may relapse, as she said she is in treatment for drug abuse. She stated "a drug is a drug" and that her receiving any medication was a big issue with her.

Hernandez said prior to seeing Dr. Noak, she was bloated and needed help from other inmates to use the bathroom and to get around. A wheelchair had been given to her for use because she had passed out on 012904. She said she didn't request to see Dr. Noak on 013004 and that she was called down to see him.

Hernandez told me that she initially arrived at the facility on 112303 and has not seen Dr. Noak before, for medical reasons or any other time. She explained that she is an inmate worker and that she does most of the work at the facility. She said she had a kidney infection in the past and thought what she was experiencing during the last week of January had to do something regarding her kidney.

We talked about 013004. Hernandez said that sometime late on that day, Barrett checked her blood pressure and found out that it was extremely high and then a few minutes it was extremely low. She said a few minutes after her blood pressure was checked, she was called to the medical office and saw Noak. She said she got up on the table and laid her right side. She said that "everybody was running around" and that Noak appeared upset because a copy of the CAT scan was not in the file. She described Noak as being "off the hook". She said she didn't know Noak, or even his name, until after her visit with him.

Supervisor's Office / Initial / Date/Time	Supervisor's Signature / Serial / Date/Time
Detective D: Lurack/1594/022304/0950	<i>[Signature]</i> 2137
ACSD Detective Supplement #17	

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000744
ACSD0006

00122231517


ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Subject/Victim's Name (S) Noak, John		3. AD	4. DS No 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634				6. Phone	7. Page 3
8. Date	9. Time Occurred	10. Route To	11. Division Detectives		

Hernandez said that Noak checked her breathing and that he got upset because she couldn't breathe deep for him. She said that Noak said, "Now let's breathe deep and I'm serious". She informed him where it hurt on her body and said that Noak asked her some questions. She described Noak as being "uptight". During this time, Hernandez said that the medical staff was attempting to get a copy of the CAT scan faxed to Noak. She said she remembered Noak calling Nicholson an "invalid" because the CAT scan wasn't in the file.

While still in the medical office, Hernandez said that Nicholson looked at her and said that she looked "a little gray". She said Nicholson asked her if she wanted to sit up and Hernandez said, "Can I just go back?". Hernandez said she still didn't know why she was there being seen. She said Nicholson asked Noak if Hernandez can leave and Hernandez said she heard Noak say, "Go ahead...get her out of here!". Hernandez said she got up and as she turned the corner when exiting the office, she felt dizzy. She said that Nicholson had a hold of her right arm, in support, as they left the office. She said her knees felt like "Jell-O". She said she remembered Nicholson telling her, "Just lean up against the wall" so that she could use the wall to ease herself into a sitting position. She said that Nicholson was helping her with backing up to the wall. Hernandez said that she just wanted to get back to her room. (At this time in the interview, Hernandez became emotionally upset and began to tear-up) Hernandez said, "I was thinking...I just want to get away from that jerk (Noak)". She said that Nicholson asked if she was ok, looked at her, and told her to slide down the wall to sit down. She said that Nicholson was "really holding me". She then realized that Barrett had arrived and was holding her other hand as it was being explained to her to sit down.

As Barrett and Nicholson were assisting Hernandez, Hernandez said she remembered a "scared look" on Barrett's face. She said the look was a "total surprise" look. She said as she turned to look to see what Barrett was seeing, she said she saw a hand and that the hand grabbed Nicholson. "His hand pushed her...like a force", as she explained Noak pushing Nicholson. She said Noak forced Nicholson to move out of the way. Before Noak broke the grasp Nicholson had on Hernandez, Hernandez said that Nicholson was grasping tighter and that Noak "literally grabs my arm and her (Nicholson's) wrist and makes her let go". I asked her if Noak said anything and she said he said, "I'll be escorting Ms. Hernandez to her room by myself". She said he grabbed her up, because he is a tall man, grabbed her right arm and led her down the hall. A few steps later, Hernandez said she told Noak, "Sir, you're hurting me". She said that she was on her tippy toes on her right foot as she was taken down the hall. Hernandez said he didn't say anything while they were going to her room but that he clenched tighter. She said she was scared and eventually told Noak that her ears were ringing. She said that Noak responded to that comment with, "Ms. Hernandez, my ears have been ringing for 2 weeks to come to the stupid inmates, like you, to come hear complaints". I asked how Noak knew where her room was and she said it seemed like someone told him where it was. She also said that she saw two inmates near the bathroom located near the hall and thought if she yelled for help, "they would have my back" and help her. But she noticed that as she and Noak approached, the two inmates moved out of their way.

Reporting Officer: Serial / Date/Time Detective D LUKABIK/2594/022304/0950	Supervisor Approving / Serial / Date/Time 
--	---

ACSD Detective Supplemental Report

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000745
ACSD0007

00122231517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Suspect/Victim's Name (S) Noak, John		3. FD 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634		6. Phone		7. Page 4
8. Date	9. Time Occurred	10. Route To		11. Division Detectives

Hernandez said she remembered Noak asking her how long she had left at SBWCC. She said she remembered being on her tippy toes and calling him "Sir". She said she told him she had 2 months left. Hernandez said his reply was, "It's not as pretty in Pocatello" or "It won't be as pretty in Pocatello if I have to send you back there. I suggest you heal real quick." She said she didn't know what to think but she knows of one other person being sent back to Pocatello. The Pocatello Woman's Correctional Center is located there and she believed Noak's statement about being sent back there was a threat.

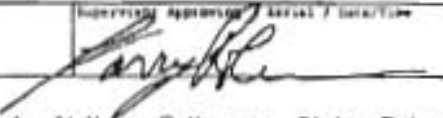
I asked her about the pace as Noak escorted her down the hall. She said, "it seemed very fast, I mean not too incredibly fast" and said that he seemed like a tall/big man. She said she was counting doors as she approached her room and was "literally holding" her breath. She said she isn't sure if she told him where her room was or if someone else told him but when they reached her room, he opened the door with his right hand and pushed it open with force. He used his foot to stop the door as it came back. She said Noak made the statement, "Don't make me do what I said", in reference to sending her back to Pocatello. She said before he left, he said, "I suggest you lay down and get some rest, Ms. Hernandez". When he left, Hernandez said she was asked by her roommates who the man was and she said, "I don't know but he's a real jerk".

I asked her about using the wheelchair prior to the incident and she said that Noak wouldn't let her use the wheelchair, but yet, the question about using it never came up. She wasn't sure if she came down to the office in the wheelchair.

Hernandez said she was "trying to figure out what she had done to the man" for him to grab her and take her down to her room. I asked if she tried to pull away when he had a hold of her and she said, "Ya". She again told me that Noak forced Nicholson away and grabbed her (Hernandez). She said the best thing for her to do was to go with him, adding, "What choice do I have, I'm an inmate".

I concluded my interview and Wolf had some questions he wanted to ask Hernandez. During his interview with Hernandez, she said that the only time she has ever been seen by Noak was on 013004. He asked her what was going on in the medical room that caused her fear. She had previously stated to me that when she entered the room, she became afraid. Hernandez said that it was the way Noak talked to the ladies (Barrett and Nicholson) that made her frightened. She said it was "like he was God". She said he was very rude but had a hard time explaining how she felt frightened.

Hernandez was asked about her expectations when she goes to see a doctor and she said her expectation is to be "treated fair". She said she felt threatened immediately when Noak forced her to breathe deeper. She said it hurt for her to do that. She also said that she understood the name calling to be towards Barrett, rather than Nicholson,

Reporting Officer / Initials / Date/Time Detective G. Lukanick/2596/022304/0950	Supervisor Approval / Initials / Date/Time 
---	--

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis **000746**

ACSD0008

00122231517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Subject/Victim's Name (S) Noak, John		3. NO	4. DA # 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634			6. Phone		7. Page 5
8. Date (mm/dd/yyyy)	9. Time Occurred	10. Date To	11. Division Detectives		

when she said Noak called her an "invalid" and that he had called her "stupid" for not having the chart ready. She recalled Noak saying something to the effect of "If the PA was doing her job, I wouldn't have to be here". When Wolf asked her about Noak's ability to send her back to Pocatello, she said, "Why would he threaten me with that if he doesn't have the ability?"

Before completing the interview, I asked her if she was under the influence of any medication at the time she saw Noak. She said she wasn't. She said she was distraught because she wanted to talk to someone about the incident. She told me she had access to talk to a counselor. I asked and looked for any signs of injury from the incident and she said there wasn't any now and I didn't see any signs of injury. Hernandez told me that there were no photographs taken but that there was redness on her arm where Noak had grabbed her. She said Lt. Presely looked at her arm and thought an injury on her arm was from the IV, but Hernandez told me that the IV wasn't near where Lt. Presely saw the redness. Hernandez again told me that during the escort, Noak "made her" walk with her.

I later checked with Nicholson and found out that Rose Marie Messado, LPN, checked on Hernandez at the request of Lt. Presely and Messado noted in Hernandez's chart that there were no signs of injury. During a later interview with Janna Nicholson, Nicholson said that Messado said that she didn't "want to get involved" with the incident.

We concluded our interview with Hernandez and asked to talk to PA Karen Barrett. Barrett had previously completed a statement, which was attached to the packet I received from Wolf.

Barrett came into the office we were in and Wolf and I introduced ourselves and told Barrett why we were there. She was told about our individual investigations and she allowed us to audio record the interview.

I began by asking her to tell me about Hernandez and the incident that occurred on 013004. Barrett was familiar with what I was talking about and began with telling me that Hernandez had been having medical problems. She said she initially thought Hernandez had a bladder infection. She said that Nicholson had called Noak for follow up advice and he gave authorization for Hernandez to go to St. Alphonsus Hospital. Hernandez returned without a definitive answer to what the problem was. Barrett said that a request was made by her and Nicholson to Noak that he come and see Hernandez. Barrett said he came to see her on 013004. She said she briefed him, gave him the chart, and asked for the patient. Barrett said she was there for the physical assessment and then left the room, with Nicholson taking her place in the room.

We talked about the incident and she told me that Nicholson and Hernandez were at the corner of the room and the hall. She said she was immediately suspicious that something was "amiss". Barrett said she stopped and saw that

Reporting Officer / Serial / Date/Time Detective D. Lukash/2594/022304/0950	Supervisor Approving / Serial / Date/Time  2133
---	---

ACSD Detective Supplement 8/97

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000747
ACSD0009

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Subject/Victim's Name (S) Noak, John		3. SD	4. DB No 17256
5. Location/Address 13200 Pleasant Valley Rd. Boise, Idaho 83634			6. Phone		7. Page 6
8. Date	9. Time Occurred	10. Route To	11. Division Detectives		

Nicholson was advising Hernandez that she needed to sit down. Barrett said that Nicholson had the "situation totally in hand. There was no panic." She said that if Hernandez was to go down, she was there to help Nicholson. Barrett said she then heard a slam and heard Noak say, "She can walk". She saw Noak come out of the room and she said he "inserted himself between Janna (Nicholson) and the patient and took her by the arm and briskly hauled her down" (the hall). I asked how hard it appeared Noak had grabbed Hernandez and she told me that that is a subjective question. She said, "It looked to me like...a little more aggressive than what I would". She said she would have thought if someone was ready to pass out, Noak would have waited or figured out what was going on before taking Hernandez down the hall.

I asked about Noak and she said that he is rude and can be "very abrupt" and was so on 013004. She said two people (her and Nicholson) already had the situation under control. She said Nicholson is well trained and that she (Barrett) didn't even rush right in to take over. She said that Nicholson had it "totally under control". I asked her if Noak came over to see Hernandez because he had to and she said that according to her recollection, "he was told to come over here". She later said that Nicholson, seeing that Noak did not see Hernandez, called an administrator and the message went through the channels to get Noak to respond.

We talked a little about what happened right before Noak saw Hernandez. She said that she escorted Hernandez slowly to see Noak and that Hernandez did "ok". She was still passing blood in her urine and that between the time she took Hernandez's blood pressure and the time Noak saw her, it was about 30 minutes. I asked her if she spoke to Nicholson after the incident and she said that Nicholson was in shock.

Wolf asked her if she thought Hernandez was faking an illness. Barrett said that she believed Hernandez had a medical issue. He asked her about what she meant by "inserted" when she described the way Noak took a hold of Hernandez. She said that Noak, "immediately took over and away he went". When Wolf asked if Hernandez was willingly following him, Barrett said, "I don't think she had much...she was moving, um, I'm not quite sure if she was just fearful" and said she couldn't ascertain what she was feeling. She said she and Nicholson were "bracing and waiting" to see if Hernandez would have another "episode". Wolf asked about the height of both Noak and Hernandez. She estimated Noak at being at least six feet tall and Hernandez at being 5 feet 5 inches tall.

I asked Barrett how Noak pushed Nicholson aside and she told me that she couldn't say if he forced or inserted himself, but that it happened fast. She said it was "one fluid movement" and that Noak was "in place" and Nicholson was "out of place". I asked if she heard Noak say anything to Hernandez as they walked down the hall and she said the only thing she heard him say to her was, "She can walk". She said she thought to herself, "How does we know that so fast?". I asked if when he examined her, did Noak say anything to her or Hernandez about the assessment and she said he only asked Hernandez, "Does this hurt?" as he was doing the physical assessment.

Reporting Officer / Serial / Date/Time Detective D. Lukash/2596/022304/0950	Supervisor / Serial / Date/Time <i>[Signature]</i> 2133
--	--

ACSD Sheriff's Supplement 8-87

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000748
ACSD0010

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic: Battery		2. Subject/Victim's Name: (S) Noak, John		3. ID	4. CR No 17256
5. Location/Address: 13200 Pleasant Valley Rd, Boise, Idaho 83634			6. Phone		7. Page 7
8. Date Occurred	9. Time Occurred	10. Route To		11. Division Detectives	

Barrett read from Hernandez's chart. She told us that on 020404, she saw Hernandez and that Hernandez said she was still tender at times. She said that on 012904, Hernandez was in severe pain and there was blood in her urine. Also on 012904, she said that "Per Andy Mitchum, H.A.S., Dr. Noak would be down later this afternoon". Also on 012904, she said that Hernandez fainted and that Nicholson called Noak on his cell phone. Noak told Nicholson that he was in a meeting and it would be close to 2300 before he could be at the facility. Barrett said that Noak then told Nicholson to take her to the hospital. Noak's assessment, on 013004, was "pain and spasm...cholicky...vitals normal, no fever..."

Barrett said that in her opinion, the physical assessment conducted by Noak was adequate.

We ended our interview with Barrett and I called Nicholson. She said she would be able to meet with Wolf and I on 021204 at 7200 Barrister, in Boise.

Janina Nicholson came to the Public Safety Building and met with Wolf and I on 021204, at approximately 0930 hours. We introduced ourselves, told her about our individual investigations, and asked her if we could audio record the interview. She agreed.

I asked Nicholson about the incident and how she was involved. Nicholson said she became involved during the middle of the day on 012804, when Hernandez complained of pain. She said that Barrett gave Hernandez a urinalysis. She said that Hernandez had acute abdomen and felt poorly most of that week.

Nicholson said she came back to work the next morning and saw that Hernandez's condition worsened. She said she checked on Hernandez every 1/2 hour. She said that Barrett called Noak and told him what was happening. Noak did not come in and Nicholson became more concerned about Hernandez's condition. She then called Mitchum and was told Noak would be down to assess her. Nicholson said Mitchum came by the facility to drop off supplies and said Noak was on the compound and would be by. Nicholson said Hernandez was in her room getting IV fluids and was getting worse. Nicholson said Hernandez was given medication but that Hernandez was also concerned about an addiction because of drug treatment. Nicholson said that Hernandez was urinating blood at that time.

I asked Nicholson about talking to Noak, in general, and she told me that "If you don't have anything significant to tell Dr. Noak, don't call him". I asked what Noak's response would be and she said he would say, "So?" or "Ya?".

Nicholson said it was close to 1900 hours, 012904, and Noak still had not responded to SBWCC. Nicholson said she called his cell phone wondering when he would arrive. She said his response was, "Well" and that he would not be

Reporting Officer / Serial / Date/Time Detective D. Lukaski/2594/022304/0950	Supervising Approval / Initial / Date/Time  2133
ACSW Detective Supplement 1/91	

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

ACSB749

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Subject/Victim's Name (S) Noak, John		3. RD	4. DR No 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634				6. Phone	7. Page 8
8. Date Occurred	9. Time Occurred	10. Route To	12. Division Detectives		

there until 2300 or 2400 hours because he was at a meeting. She told him that Hernandez was not doing real good and that there was still blood in the urine and she was experiencing pain. She told Noak that she believed she was not drug seeking, something Nicholson said Noak questions about inmates. Nicholson said Noak minimized the situation and told her to call back in an hour or two.


Twenty five minutes later, Hernandez fainted and went down. Nicholson said she called Noak back and told him that they had limited staff and that he needed to come now or Hernandez needed to be taken to the hospital. She said Noak told her to take Hernandez to the hospital. Nicholson, with an IV attached to Hernandez, took her to St. Alphonsus in a van. She said Hernandez was released at 0230 hours and was given Dilaudid. Nicholson said that Hernandez was not given the option to go to the hospital or not.

On 013004, at 0700 hours, Nicholson said she came to work and checked on Hernandez. She said she was in about the same condition as earlier in the morning. She said Hernandez was orthostatic all day long. Nicholson mentioned she has been working there a year and noticed a big change in Hernandez.

Nicholson said she and Barrett checked on Hernandez before Barrett was to go home. She said Noak was not scheduled to come in and it was a surprise to her that he showed up on 013004. Nicholson said Officer Todd Jackson told her that when Noak arrived, he had made a statement to the effect of, "Is there nobody who works in medical around here" as he couldn't get into "Procedure Room". Supposedly Officer Jackson had to open the door for Noak.

When asked what happened on 012904, Nicholson said she was angry Noak didn't come down to look at Hernandez. She learned that Mitchum called Rick Dahl, the regional director of Prison Health Services (PHS), the company for which Noak is the Medical Director for Idaho, according to Nicholson. Nicholson assumed that Dahl told Noak to check on Hernandez.

Nicholson said Barrett did a full assessment of Hernandez while she was in her room on 013004. A little later, Noak arrived and Hernandez came down to be seen by him. Barrett was in the room with Hernandez and Noak initially, but then Nicholson took over for Barrett. Nicholson said Noak was at the desk and Hernandez was sitting, swaying. Nicholson said she asked Hernandez if she was dizzy and Hernandez said she was. Nicholson said she was going to help Hernandez when Noak said, "Just lay down!" Nicholson said Noak didn't turn around and appeared irritated and was abrupt. Nicholson helped Hernandez lay down. According to Nicholson, Hernandez's color was poor and she was complaining of nausea. Nicholson said Noak didn't say anything and wrote in her chart for the next 5 minutes. She said Hernandez looked scared to death, aside of being sick. She tried to make her more comfortable and talked to her. Nicholson said she didn't know where Noak was in the process of evaluating Hernandez.

Reporting Officer / Serial / Date/Time Detective D. Lukashin/2094/022304/0950	Supervisor / Serial / Date/Time  2133
---	---

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis **000750**

ACSD0012

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Subject/Victim's Name (S) Noak, John		3. PD	4. DR No 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634		6. Phone		7. Page 9	
8. Date Occurred	9. Time Occurred	10. Route To	11. Division Detectives		

Nicholson said Noak then told Hernandez to "go back to your room!". Nicholson said she was standing by the door and saw that Hernandez was becoming "shaky". She said she asked Hernandez if she was all right and Hernandez told her, "No, I feel dizzy". Nicholson told her to relax as Hernandez tried to hold onto the side of the bed. Nicholson said Hernandez was trembling and that she told Hernandez to wait until it passed. Nicholson asked if she was all right to go and she said she thought so. Five steps later, at the door, Nicholson said Hernandez started to tremble and sweat. Nicholson told Hernandez that she wanted to put her (Hernandez's) back against the wall and for her to slide down to a sitting position. As Nicholson was assisting to move Hernandez right outside the door, she heard a bang, found herself pushed out of the way, and saw that Noak forcefully grabbed Hernandez under her right arm. "It happened so fast, I was so shocked...it moved me". Wolf asked if it was a move to protect her safety and Nicholson said, "Oh no, it was a move to get me out of his way. There is no doubt about it". She said it was "very aggressive". She said that he did not verbalize one thing to her. She said she was helping Hernandez to turn against the wall and the next thing she knew she was three steps aside, off-balance. She saw Dr. Noak grab Hernandez and she thought Hernandez was going to faint again. She said he took Hernandez and went "quickly" down the hall. Nicholson said she just stood in the hall and watched them go down the hall. She said she doesn't remember saying it, but officers told her she stood in the hall with her hands up saying, "I quit!" She said she said it because she couldn't tolerate it anymore. She said she was so mad, to the point of tears, that she was pushed. She said she had to get away or she would have probably said something to get her fired.

Nicholson said she wants the best for the inmates because they will be going back out to the community. She said the last thing they need is abuse in the facility. She feels her compassion may irritate Noak. She told Wolf and I that Noak, in the past, has talked to her about "being taken for a ride" by the inmates. Nicholson said that Noak had told her, in regards to another inmate with similar symptoms, "They don't pay these people enough for acting lessons" and proceeded to tell her how to assess a patient and not to look at how they are acting. Nicholson said that Noak has referred to inmates as "dirtbags" and one inmate as a "fat fuck".

I asked her if she had heard anything that Noak said to Hernandez while they were going down the hall and she said she could see he was saying something but couldn't hear what was being said.

In regards to Noak's attitude, Nicholson said, "I can't tell you that I've seen Dr. Noak ever be pleasant and happy". She said he says a lot of negative things for what he sees the inmates for. He also talks about his physician assistants, in front of "us", how stupid and incompetent they (PA's) are. She went on to tell Wolf and I about some of Noak's medical practices that would appear to be unethical.

We talked about the pushing incident again and Nicholson said she couldn't see Hernandez's expression when she was grabbed because Noak was in her way. She also said that the doctor grabbed Hernandez's right arm, one that

Reporting Officer's Serial / Date/Time Detective D. Lukasik/2594/022304/0950	Supervisor Approving / Serial / Date/Time <i>[Signature]</i> 2133
---	--

ACSD Detective Supplement 8/97

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000751
ACSD0013

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Type Battery		2. Subject/Victim's Name (S) Noak, John		3. MO 17256	4. DO MO 10
5. Location/Address 13200 Pleasant Valley Rd. Boise, Idaho 83634				6. Phone 10	
7. Date 10/10/04	8. Time Occurred 10:10	9. Route To 10:10	10. Division Detectives		

she had had reconstructed. She saw two unidentified inmates near the bathroom, which is down the hall, and saw them move out of the way as Noak and Hernandez approached.

I informed her that I believed she was battered and asked her if she wanted to be a victim. She agreed she wanted to file charges.

I remembered the statement Hernandez told me about Noak threatening to send her to Pocatello if she didn't heal quickly. I asked Nicholson if she knew whether or not Noak has that power to send an inmate to Pocatello and she said, "I guarantee you he does. He's already done it." She said the whole focus is on medical issues because of the medical coverage in Pocatello. She said it's common for Noak to threaten to put someone in a "more restrictive" environment and that she has heard the threats more than once.

Nicholson feels that the inmates are in prison and that they are on "his time". She said he shows up late for appointments, after the inmates have been waiting for him, and that he has a "blatant disregard" for the inmates. She said he walks around like he is king and is never questioned.

I asked about the grip Noak had on Hernandez and she said he had Hernandez's arm over his arm and she was yanked up on him. She thought she was leaning on him but later found out, 45 minutes after the incident, from Hernandez, that she was hurting "so bad" and was up on her tippy toes. I asked her if anyone saw Hernandez regarding injuries from the incident and she told me that Messado did but that she did not see any notes in Hernandez's chart.

I asked Nicholson if she called for help when she was trying to get Hernandez to slide down the wall to sit. She said she did not and that Hernandez is a "little thing". I asked her why she thought Noak came out from the room. Nicholson said that he was irritated with her and thought Hernandez "was playing" her. She felt he decided to take control and take Hernandez to her room. Nicholson said it was "in no way an effort to assist me". Nicholson said her "normal interaction" with Noak, after a patient is seen, is to tell her what the plan of care would be. She said Noak was "put out" that day and there was nothing close to their "normal interaction". She also said that Noak did not give any follow-up care information or tell Hernandez what he thought was wrong, in her presence.

Nicholson said she is also a paramedic for Payette County. She said she has lifted 200 pound people before and that Noak is aware of her employment with Payette County. She said he is aware of her capabilities and that she would call for assistance, if she needed it. In this case, she said she did not need assistance, nor did she call for help.

Reporting Officer / Serial / Date/Time Detective D. Lukashik/2594/022104/0950	Supervisor Approval / Serial / Date/Time <i>[Signature]</i> 2133
---	--

ACSD Detective Supplement 8-97

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000752
ACSD0014

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident Type Battery		2. Subject/Victim's Name (S) Noak, John		3. PD 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634			6. Phone	7. Page 11
8. Date Occurred	9. Time Occurred	10. Route To	11. Division Detectives	

I asked Nicholson if Barrett was present when Noak came out of his office, in regards to the incident. She said Barrett had came out of her office as the incident occurred. She said she saw that Barrett's face went white when she (Nicholson) was pushed aside. She said both her and Barrett were "flabbergasted" over the situation. She also said that it is her job to assist a patient, not the medical doctor's.

I concluded my interview and Wolf had a few questions to ask Nicholson, which was mainly in regards to internal matters.

Before Nicholson left, I asked her about the statement of the "ringing ears" that Hernandez told us. She said she wasn't surprised that he said that because it sounds like something he would say. In regards to the battery committed against her, she said she wasn't thinking about her when it occurred because she was thinking about the patient. She said it dawned on her when she was at work in Payette County, while writing her statement, that "he pushed me". She thought about filing charges after she realized that she was shoved. She said she had no injuries and that the battery against her may be trivial, compared to the battery against Hernandez, but she feels her personal space was violated and that Noak had no right to shove her.

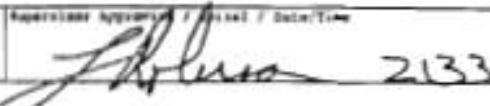
Nicholson also said, in regards to the incident, that she believed the "escort" by Noak was not used for medical or security purposes. She felt that Hernandez should have been set down. Our interview with Nicholson ended.

On 021204, I called Dr. John Noak and asked him if he would come to the Public Safety Building for an interview regarding the incident that occurred on 013004, with Norma Hernandez. He said he would come in on 021304 and we agreed on meeting at 1300 hours.

On 021304, at approximately 1300 hours, I met with Noak and his attorney, Lois Hart. Steve Wolf was not present with me in this interview.

I informed him that he was free to leave at anytime and made mention that he had his attorney with him. I told him and his attorney that there are allegations that he battered an inmate and a staff member and asked him to tell me what he remembered about that day.

Noak said he recalled Hernandez and said if he had her chart, it would help him remember more of the situation. I showed him a picture of Hernandez and he said she was the person he saw. He said he was in contact with staff members several times on 012904 and that he gave authorization for Hernandez to go to the hospital for a CT scan. He proceeded to tell me what is needed to treat a person with the symptoms that Hernandez had.

Reporting Officer / Serial / Date/Time Detective D. Lusk / 2694 / 022304 / 0950	Supervisor Approval / Serial / Date/Time  2133
---	--

ACSD Detective Supplement 8/91

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000753
ACSD0015

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Type Battery		2. Subject/Victim's Name (S) Noak, John		3. PD	4. DR No 17256
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634				6. Floor	7. Page 12
8. Date Occurred	9. Time Occurred	10. Route To	11. Division Detectives		

We started to talk about the follow-up examination with Hernandez on 013004. He said she came in and sat on the examination table and appeared to be shaking. He said there are different reasons for someone to be shaky, one of them being an infection. He said her vital signs were normal. He said he asked her questions to distract her to see if the shaking would stop. He said about thirty seconds later, he saw that she was not shaking anymore. He said he thought Nicholson was in the room during this time. He said he continued with the examination and asked her questions that he is consistent with asking almost all his patients, which include "How long have you been feeling ill?". He said she was responding to his questions.

Noak said he was an emergency room doctor for awhile and said if a person says they are dizzy, "the best thing to do is to have them lay down". He said he checked her abdomen as she was laying down because the abdomen would not be tense. I asked him if he advised her what she needed to do to take care of herself. He said he normally tells his patients what they need to do but doesn't remember specifically if he told Hernandez. He said he would have to take a look at his chart on Hernandez.

I asked Noak what happened after the examination. He told me that Hernandez went out into the hall as he stayed at his desk, documenting the assessment of Hernandez. He said he heard somebody in the hall, he thought it was Nicholson, ask something to the effect of, "Are you going to faint?" and "Are you going to fall down?". He said that he has been in the ER many times and "you don't want them (the patient) to fall". He said he "zipped" out of the room and got a hold of Hernandez's arm. I asked him if it looked like help was needed and he said, "I didn't know that until I got there". He said he had information (the questions being asked) and that he "zipped" around out of his office. He also said that if Hernandez were weak, he'd probably bring her back in the room to re-examine her, something he didn't do. He said that he secured Hernandez's arm and had but his hand underneath her arm pit. He said he told Hernandez, "Let's walk down to your room". He said he started out slowly and increased to a normal speed for her stature, not his. He said he talked to her on the way to her room, asking her how much time she had left and if she was a "rider" or not.

Earlier in the interview he told me that when a person is feeling dizzy, that the "best thing to do is to have them lay down". I asked him why he grabbed Hernandez if he heard she was going to faint. He said he didn't grab her and that he "just moved in". He said he didn't notice what he did to Nicholson and that he was focused on the patient.

I told him that Hernandez told me that she was never told anything about follow-up care and asked him why, in this case, he forgot to tell his patient this information. He said he doesn't know but if he had the chart he could tell me. I also asked him about the statement about sending Hernandez back to Pocatello. He said he meant it to mean he was confident and he hoped things could be taken care of things at the SBWCC. He said he was telling Hernandez of the possibilities.

Reporting Officer / Initial / Date/Time Detective D. Lukash/2/14/022004/0950	Supervisor / Initial / Date/Time <i>[Signature]</i> 2133
---	---

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis 000754

ACSD0016

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident/Topic Battery		2. Subject/Victim's Name (S) Noak, John		3. MO 17256	4. DB MO 13
5. Location/Address 13200 Pleasant Valley Rd, Boise, Idaho 83634		6. Phone		7. Page 13	
8. Date Occurred	9. Time Occurred	10. Route To		11. Division Detectives	

Noak said he was aware that Hernandez's blood pressure was "bouncing around". I asked him if he thought she was faking the illness. He started to explain the difference between males and females and signs of deception. He didn't answer my question specifically in regards to Hernandez. Eventually he did say he didn't know if she was faking an illness for the purpose of getting medication. He said "given the absence of objective findings" and that nothing was matching up and with the blood in the urine, he became suspicious. He said that is why Hernandez went to the hospital.

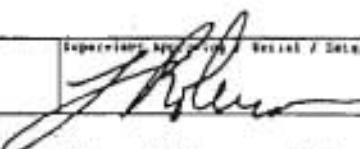
I asked what his attitude, in general, is towards the inmates. He said it was of sadness. He said he doesn't feel like he has power over them. I asked him how he treated the PA's and he told me it depends on the daily situation. I asked him if he lets the PA know when he/she does something wrong in front of the inmates and he told me, "not intentionally". He said he tries to praise them in public.

I asked him if the visit on 013004 with Hernandez was planned. He said it was and that he made the decision to come and see her. I asked him why a request would have to come through Mitchum and he said he doesn't know why. He said he received calls from Nicholson the day before about Hernandez.

I asked him about the incident in the hall again and asked him why he felt he had to step in to assist Hernandez. He said it was "instinct" that made him get involved. He said that in emergency situation, it is instinct for him to take charge. He said they didn't ask him for help and that he just took over. He said the patient is his responsibility.

I remembered again about his comments to me that when someone is dizzy, that they should lay down and that if Hernandez felt weak, he would re-examine her. I asked him if he had enough time to assess Hernandez from the time he "assisted" her to the time he started walking her down the hall. He told me that she felt steady and she was ok on her feet. He said he didn't get the sense that she was falling. He said he didn't recall if he asked Hernandez how she felt before walking down the hall. He said he told Hernandez, "Let's go for a walk". Lois Hart asked what Hernandez's reaction was and if she smiled to him. He said he didn't know if she smiled but he did say she talked. He couldn't recall if she was hostile or stiff.

I talked to Noak about Nicholson's compassion towards the inmates and asked him if he got upset at seeing Nicholson act that way. He said he has said nothing directly to her about how she interacted with inmates and that that is something that should go through the chain of command. He said that Nicholson is "overly-solicitous" but that doesn't upset him. He said he's not a social worker and stated there are programs for inmates. He said sometimes the approach he takes is easy going and sometimes it is stern. He said there are things he does different with the inmates than what he does in private practice.

Reporting Officer: Serial / Date/Time Detective D. Lukashik/2594/022304/0950	Supervising Officer: Serial / Date/Time  2133
--	---

ACSD Detective Supplement Arref

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000755
ACSD0017

00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. INCIDENT/TYPE Battery		2. SUBJECT/VICTIM'S NAME (S) Noak, John		3. PD	4. CR No 17256
5. LOCATION/ADDRESS 13200 Pleasant Valley Rd. Boise, Idaho 83634				6. PHONE	7. Page 14
8. Date	9. Time Occurred	10. Route To	11. DIVISION Detectives		

Noak told me that Hernandez was outside the room and just around the corner when he went to "assist". I told him that I was familiar with a jail setting and how security is important. I asked him if he thought what he heard may have been a set-up or if Hernandez could have taken something from his office and had it with her, using something as a weapon. I wanted to see if he thought about security concerns before rushing around the corner into an unknown situation. He said he didn't think about those security concerns.

Noak told me he had been a doctor for 15 years, 15 months of those in a prison facility. He told me about told me about his history and the difficulty of the situation working in a prison.

I asked him if he recalled saying anything to Barrett in a negative tone that day and he said he couldn't recall. I asked him if he recalled saying anything about sending Hernandez back to Pocatello. He said he told her about her options and didn't "directly" threaten her. I asked him if he ever helped another inmate in the way he did with Hernandez that day and he said he had.

Noak told me he has never had a complaint against him and that these charges could threaten his medical license. We ended our interview and I told him I would keep him informed, should charges be filed.

On 021804, I re-read Officer Jackson's statement and saw that he didn't actually see the incident. I called him to confirm what he wrote and he said all he saw was the escort. He said he couldn't hear what was said between Noak and Hernandez but it did appear they were talking. He said it didn't appear Hernandez was being moved against her will but did say she was moving "fairly quick for her condition". He said she was moving slow the days before and there was a difference between those days and the escort he witnessed.

On 022004, I went to SBWCC and asked Hernandez if she would sign a form allowing the release of her medical records so I could add the hand written notes from her chart for the days prior to and including 013004. She agreed to release the chart and copies of the notes have been booked as evidence.

I am asking that the Ada County Prosecutor's Office review this case and to seek a warrant for the arrest of Dr. John Noak. Noak is accused of battering Norma Hernandez, an inmate at the South Boise Women's Correctional Center, and Janna Nicholson, a Correction Medical Specialist working at the South Boise Women's Correctional Center. After Noak saw Hernandez on 013004, she left the room and almost immediately felt faint and dizzy. Nicholson was at her side to help her and began to assist Hernandez to slide down a wall to a sitting position. Physician Assistant Karen Barrett was also nearby to assist, if she was needed. Both Hernandez and Nicholson stated they heard a slam or bang and soon found Noak pushing Nicholson out of the way and grabbing a hold of Hernandez. Barrett was also a witness to these actions. Nicholson said she did not call for assistance and Barrett,

Reporting Officer / Serial / Date Time Detective D. Lukash / 2594 / 022104 / 0950	Supervisor / Serial / Date Time 2133
---	--

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

AC000756

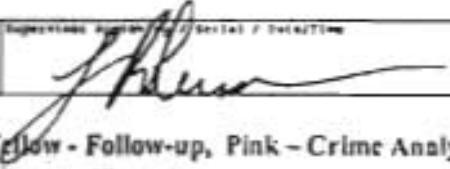
00122201517

ADA COUNTY SHERIFF'S DEPARTMENT SUPPLEMENTAL REPORT

1. Incident / Title Battery		2. Subject/Victim's Name (S) Noak, John		3. AD	4. DR No 17256
5. Location / Address 13200 Pleasant Valley Rd, Boise, Idaho 83634				6. Photo	7. Page 15
8. Date / Time 11/11/04	9. Time Occurred	10. Route To	11. Division Detectives		

who was there, said it didn't appear Nicholson needed help. It appears in his haste, Noak carelessly took control of a situation that needed no further assistance and in doing so, he willfully and unlawfully used force against Nicholson, against her will, in order to get a hold of Hernandez, who he also willfully and unlawfully used force to escort her down the hall. In Noak's own words during an interview, he stated that he heard someone say something to the effect of "Are you going to faint" and his instinct lead him to immediately assist in a situation. He also told me that when a person is dizzy, "the best thing to do is to have them lay down". Witnesses say that Noak immediately took Hernandez down the hall after saying, "She can walk", which would appear that he didn't assess the situation, other than by walking her, or re-examine Hernandez, like he said he would have done if she felt weak. These actions on Noak's part appear to have been unnecessary.

The packet of statements given to me by Steve Wolf has been included with this report. Interviews with Hernandez, Barrett, Nicholson, and Noak were recorded digitally and a CD containing those interviews has been booked into evidence.

Reporting Officer / Serial / Date/Time Detective D. Lukasik/3594/022304/0910	Supervisor / Serial / Date/Time 
--	---

ACSD Serials Supplement 0017

DISTRIBUTION: Original - Records, Yellow - Follow-up, Pink - Crime Analysis

000757
ACSD0019

00122201517

INMATE CONCERN FORM

DR# 17256

Inmate Name: Hernandez Norma	Number: 71595
Unit Assignment: 13-C	Date: 1-29-04
To:	(Person most directly responsible for issue/concern)

Issue/Concern (Briefly explain problem)

The male DR # that seen me today was very forceful abrupt + rude - He grabbed me by my arm after pushing the nurse to the side. With a very strong grip he had on my arm and forced me to walk back to my

Inmate's Signature: _____

Staff Comments and Action Taken:

Date Received:

1/30/04 @ 1930 hrs [Signature]

Signature/Title: _____

Date Signed and Mailed: _____

DISTRIBUTION: Both copies should be forwarded. Yellow copy will be returned to you with response.
WHITE - File YELLOW - Inmate

NOT LEGIBLE

000758
ACSD0020

Hernandez
13-0

11848
1-29-04

DR# 17256

LT Presly

room with no concern of my health or well being. he had such a grip on my right arm, and his manly force, that he ~~escorted~~ escorted me back to my room in such a manner that I was almost walking on my tip-toes.

As we came up to the bathroom he informed me if I didn't heal quickly, that I would be sent back to poc-tellow. "Two months would be a lot harder in Poc-tellow than here.

From the moment I watched him forcefully move the nurse out of the way and then leached on to me, I was so scared and overwhelmed, that I never said a word to him. I Don't think I even took a breath. I refuse to ever be seen by him again.

Thank you

John Edward

1-29-04

000759

ACSD0021

Continued

Hernandez
13-C

11-078
1-29-04

0217256

LT Presly

room with no concern of my health or well-being. he had such a grip on my right arm, and his manly force, that he ~~me~~ escorted me back to my room in such a manner that I was almost walking on my tip-toes.

As we came up to the bathroom he informed me if I didn't heal quickly, that I would be sent back to Pocatello, "Two months would be a lot harder in Pocatello than here."

From the moment I watched him forcefully move the nurse out of the way and then latched on me. I was so scared and overwhelmed, that I never said a word to him. I Don't think I even took a breath. I refuse to ever be seen by him again.

Thank you

Tommy Edwards
1-29-04

000760

ACSD0022

Continue

13-0

1-29-04

DE17256

LT Presly

room with no concern of my health or well being~ he had such a grip on my right arm, and his manly force, that he ~~ex~~ escorted me bar to my room in such a manner thx I was almost walking on my tip-toes.

As we came up to the bathroom he informed me if I didnt heal quickly, that I would be sent back to pocetellow, "Two months would be alot harder in Poc-tello then here.

from the moment I watched him forcefully move the nurse out of the way and then latched on me. I was to scared and overwhelmed, that I never said a word to him. I Don't think I even took a breath. I refuse to ever be seen by him again.

Thank you

Tom Edward
1-29-04

000761

ACSD0023

STATE OF IDAHO
BOARD OF CORRECTION
DEPARTMENT OF CORRECTION

INCIDENT/EXERCISE REPORT FORM

Date of Incident: 01/20/04

Time of Incident:

1700

Type of Report: (click only one) Incident Exercise (Provide narrative description at bottom)

Identify Facility at which Incident/Exercise Occurred:

Division of Prisons: South Boise Women's Correctional Center

COMPLETE ONLY THE INFORMATION THAT IS APPLICABLE

Location:

Facility (Building/Unit/Block/Dorm): Tier 1, Medical Special Projects, ___ Job
County Jail.

Type of Incident:

Accidental Injury Requiring Medical Attention:

Assault:

Bomb Threat:

Disturbance:

Drill - Emergency Exercise

Escape:

Fire:

Hazardous Waste Incident

Incident Involving:

Inmate Death: Natural Causes, Suicide, Suspected Foul Play

Medical Transport:

Physical Plant/Utility Problem

Property Loss Over \$500:

Suicide Attempt:

Use of Force:

Vehicle Accident: Injuries Involved

Work Stoppage:

Other:

Individual(s) Involved:

Inmate(s): Hernandez #71898

IDOC Staff: CMS Jana Nicholson and Dr. Noak

Facility Visitors:

General Public:

Elected Officials:

State Police, County Sheriff, City Police, Fire Department, Ambulance

Brief Summary of Incident/Exercise and Action Taken: At approximately 1700 hours, Officer's R. Ness, N. Barlow, and T. Jackson saw Dr. Noak escorting offender Hernandez #71898 back to her room after being evaluated and RN Jana Nicholson standing in the hallway observing the escort. CMS J. Nicholson later reported that she had been pushed out of the way by Dr. Noak in order for him to begin the escort. CMS J. Nicholson stated while standing in the hallway that "I have had enough and I'm going to quit". At 1930 hours, offender Hernandez turned in a memo to staff stating that she is refusing to be seen by Dr. Noak in the future. Duty Officer, Lt. C. Presley was called and briefed. Sgt. B. Finley was also briefed. At 2200 hours, CMS R. Messado checked on offender Hernandez and did not see any visible bruises. CMS J. Nicholson will be turning in an information report. Lt. C. Presley will be contacting D. Haas on Monday.

000762

ACSD0024

Administrative Duty Officer Notification: Called Not Called Unable to Contact.

Medical check completed Injuries: Yes No (if yes briefly explain extent of injuries) Offender is being monitored by medical staff for physical condition.

Complete and Email this form 48 hours prior to a scheduled emergency exercise or immediately following the incident

Email to Division of Prisons Incident Report Group

CWC's Email report to Community Corrections Incident Report Group

Email sent by: T. Jackson

Original to Warden/CWC Manager

All required reports regarding this incident are to be completed and processed according to policy

Distribution List: Director, Division of Process Administrator, Institutional Services Administrator, Medical Services Chief and DOP Security Coordinator.

000763

ACSD0025

From: Christy Presley
To: Haas, Richard
Date: 2/1/04 5:30PM
Subject: incident at the facility

We had an incident here at the facility in reference to Dr. Noak. A 105 was completed on the incident. I have asked medical individuals to provide a report of the incident. The inmate has put in a concern form and refuses to be seen by the Dr. anymore because of what he did. "The male Dr. that seen me today was very forceful abrupt and rude-He grabbed me by my arm after pushing the nurse to the side. With a very strong grip he had on my arm and forced me to walk back to my room with no concern of my health or well being. he had such a grip on my right arm, and his manly force, that he escorted me back to my room in such a manner that I was almost walking on my tip toes.

As we came up to the bathroom he informed me if I didn't heal quickly, that I would be sent back to Pocatello. "two month's would be a lot harder in Pocatello than here.

from the moment I watched him forcefully move the nurse out of the way and then on to me. I was to scared and overwhelmed. that I never said a word to him. I Don't think I even took a breath. I refuse to ever be seen by him again." This is typed exactly the way she wrote it.

Janna Nicholson (one of the medical providers) verifies most of the information the Offender has given. She has completed a report for her supervisor and I requested a copy.

I have attached a copy of the two 105's that have been done.

1. I want to know what we do if a doctor needs to see her since she refuses to see Dr. Noak.
2. I have requested incident reports from other medical staff that observed Dr. Noak.
3. I have been informed that since this offender has been ill that medical has placed a wheelchair at the end of the hall for staff and offenders to assist her in going to the bathroom or for meals. If she wakes in the night, she is suppose to wake a roommate and ask them to help her to the bathroom. I do not believe this is the appropriate action to be taken for staff or offenders. What if the wrong offender is asked to help? It isn't their job nor is it the staffs job.

I will not be here on Monday, I will be back on Tuesday. If you need any further information from me please let me know. If you need something tomorrow, please contact Sgt. Finley she should be able to help you.

CC: Billie Finley, Cydnee (Cyd) Heyrend

January 31, 2004

Information Report: Incident 1/30/04, involving Dr. Noak and IM Hernandez #71898.

At approximately 1715 on Friday, January 30, 2004, Dr. Noak was in the exam room with IM Hernandez. He was examining the Pt. as she had been ill for the past 2 days and had been seen in the Emergency room the night before. Karen Barrett, PA-C had been in the room with them prior to my arriving, during the actual exam. After I arrived, Karen went to her office and I stayed with the Pt. and Dr. Noak. Dr. Noak was seated at the desk, with his back to the Pt. charting, and IM Hernandez was sitting on the exam table. I noted that Hernandez was swaying as she sat at the end of the exam table and I asked if she was dizzy. She stated that she was and I started to tell her to lie down when Dr. Noak turned and said, "lay down then". He was abrupt and appeared to be irritated. Over the next 5 minutes I conversed with the Pt. and helped her get into a position of comfort. Shortly thereafter, Dr. Noak said, "go back to your room", he did not talk with the Pt. at all about her illness or a plan of care. I assisted the Pt. to a sitting position, she became dizzy and I advised her to just sit for a few moments until it passed. Once she was able to stand up, she was noticeably pale and shaking, stating that she felt like she was going to pass out. (IM had an episode of syncope the night before and the potential for it happening again was real) I helped her to a position close to the wall and tried to comfort her as she was becoming fearful. As I was trying to assist the Pt. to slide down the wall to a sitting position, Karen Barrett came out of her office and was starting toward us to assist when Dr. Noak slammed a book or something in the exam room, walked out to the doorway and aggressively inserted himself between myself and the Pt., pushing me aside. He proceeded to grab IM Hernandez under her left armpit and basically forced her to walk briskly down the hall with him. This was not done in an effort to assist the patient to her room it was an aggressive, irritated escort! I assume he was irritated with me because I was taking time with the patient and he had already stated that there is nothing wrong with her, I believe differently after spending the last 2 days with her! He did not assess her condition, or ask any questions. I stood in the hall watching this, unable to believe what had just happened. As they walked I could hear him talking to her but could not hear what he was saying. When Dr. Noak and the Pt. were almost at her doorway, at the end of the tier, I turned around, looked at C/O Nicole and C/O Jackson who were in the Control area watching at this point. I went into the Medical Office and shut the door for a short time, spoke to Karen Barrett for a moment and then went on with Pill Call. At some point, Dr. Noak left, he did not talk with Karen Barrett or myself, he just left, leaving the Pt. charts on the desk in the exam room, and the door wide open. I am unsure how long the door was left open and I did not notice anything missing or disturbed.

Jarvis Nichols
Jarvis Nichols, CMS

1/30/2004

NOT LEGIBLE

000765

ACSD0027

STATE OF IDAHO
BOARD OF CORRECTION
DEPARTMENT OF CORRECTION

INCIDENT/EXERCISE REPORT FORM

Date of Incident: 01/30/04

Time of Incident: 1700

Type of Report: (click only one) ☒ Incident ☐ Exercise (Provide narrative description at bottom)

Identify Facility at which Incident/Exercise Occurred:

Division of Prisons: South Boise Women's Correctional Center

COMPLETE ONLY THE INFORMATION THAT IS APPLICABLE

Location:

- ☒
- Facility (Building/Unit/Block/Dorm): Tier I, Medical Special Projects, ___ Job
-
- ☐
- County Jail, _____

Type of Incident:

- ☐
- Accidental Injury Requiring Medical Attention: _____
-
- ☐
- Assault: _____
-
- ☐
- Bomb Threat: _____
-
- ☐
- Disturbance
-
- ☐
- Drill - Emergency Exercise
-
- ☐
- Escape: _____
-
- ☐
- Fire: _____
-
- ☐
- Hazardous Waste Incident
-
- ☒
- Incident Involving: Staff
-
- ☐
- Inmate Death:
- ☐
- Natural Causes,
- ☐
- Suicide,
- ☐
- Suspected Foul Play
-
- ☐
- Medical Transport: _____
-
- ☐
- Physical Plant/Utility Problem
-
- ☐
- Property Loss Over \$500: _____
-
- ☐
- Suicide Attempt
-
- ☐
- Use of Force: _____
-
- ☐
- Vehicle Accident: _____
- ☐
- Injuries Involved
-
- ☐
- Work Stoppage: _____
-
- ☐
- Other: _____

Individual(s) Involved:

- ☒
- Inmate(s): Hernandez #71898
-
- ☒
- DOC Staff: CMS Jana Nicholson and Dr. Noak
-
- ☐
- Facility Visitors:
-
- ☐
- General Public:
-
- ☐
- Elected Officials:
-
- ☐
- State Police,
- ☐
- County Sheriff,
- ☐
- City Police,
- ☐
- Fire Department,
- ☐
- Ambulance

Brief Summary of Incident/Exercise and Action Taken: At approximately 1700 hours, Officer's R. Nees, N. Barlow, and T. Jackson saw Dr. Noak escorting offender Hernandez #71898 back to her room after being evaluated and R.N. Jana Nicholson standing in the hall way observing the escort. CMS J. Nicholson later reported that she had been pushed out of the way by Dr. Noak in order for him to begin the escort. CMS J. Nicholson stated while standing in the hallway that "I have had enough and I'm going to quit". At 1930 hours, offender Hernandez turned in a memo to staff stating that she is refusing to be seen by Dr. Noak in the future. Duty Officer, Lt. C. Presley was called and briefed. Sgt. B. Finley was also briefed. At 2200 hours, CMS R. Messado checked on offender Hernandez and did not see any visible bruises. CMS J. Nicholson will be turning in an information report. Lt. C. Presley will be contacting D. Haas on Monday.

000766

ACSD0028

00122201517

STATE OF IDAHO
DEPARTMENT OF CORRECTION
OPERATIONS DIVISION

17256

INCIDENT/EXERCISE REPORT FORM

Date of Incident: 01-17-04

Time of Incident: 1040

Type of Report: (click only one) ☒ Incident ☐ Exercise (Provide narrative description at bottom)

Identify Facility where Incident/Exercise Occurred: (click in drop down menu to make selection)

Prisons Saint Anthony Work Camp Community Corrections

COMPLETE ONLY THE INFORMATION THAT IS APPLICABLE

Location:

- ☒ Facility (Building/Unit/Block/Dorm): _____ Special Projects: _____ Job _____
☐ County Jail: _____
☐ District Office ☐ Incident Address Enter Address here

Type of Incident:

- ☐ Accidental Injury Requiring Medical Attention: _____
☒ Assault: Other (see brief explanation below)
☐ Bomb Threat: _____
☐ Disturbance
☐ Drill - Emergency Exercise
☐ Escape: _____
☐ Fire: _____
☐ Hazardous Waste Incident
☐ Incident Involving: _____
☐ Offender Death: _____
☐ Medical Transport: _____
☐ Physical Plant/Utility Problem
☐ Property Loss Over \$500: _____
☐ Suicide Attempt
☐ Use of Force: _____
☐ Vehicle Accident: _____ ☐ Injuries Involved
☐ Work Stoppage: _____
☐ Other: _____

Individual(s) Involved:

- ☒ Offender(s): Murray, IDOC #(s): 23922
☐ IDOC Staff: C/O Jane LaBeck Staff ID # : _____
☐ Facility Visitors:
☐ General Public:
☐ Elected Officials:
☐ State Police, ☐ County Sheriff, ☒ City Police, ☐ Fire Department, ☐ EMS

Brief Summary of Incident/Exercise and Action Taken: Inmate was standing in hallway by medical room. Lisa Bell shoved him out of the way and stated "Some people have work to do". Inmate has decided to file battery charges against Bell for this action. St. Anthony PD notified tonight of inmate's decision and took report.

Headquarters Duty Officer Notification: Called ☒ Not Called ☐ Unable to Contact ☐Medical check completed ☐ Injuries: Yes ☐ No ☒ (if yes briefly explain extent of injuries)Offender Placed in Custody ☐ District Manager Review Concur ☐ Not Concur ☐

Complete and Email this form 48 hours prior to a scheduled emergency exercise or immediately following the incident
Email to: [Operations Incident Report Group]

Email sent by: Sgt. Mark Olier

Original to Warden/CWC Manager/District Manager

All required reports regarding this incident are to be completed and processed according to policy

000767

ACSD0029

2-2-04

Per request of LT. Presley: Information concerning an incident concerning N. Hernandez #71898 on 1/30/04.

Dr. Noak arrived at SBWCC, late in the afternoon, to perform a physical assessment on Hernandez. I observed his initial assessment but went back to my office after CMS Jana Nicholson arrived for further assistance. I came out of my office and saw Jana and Hernandez stopped in the hall. I then saw Dr. Noak come out of the exam room and move Jana aside. He then took the arm of Hernandez and escorted her down the hall to her room.

Karen Barrett MS PA-C



00122201517

DR 17256

SOUTH BOISE WOMEN'S CORRECTIONAL CENTER
STAFF INFORMATION REPORT

I.R. #

Date of Incident: 01/30/04Time of Incident: 1515 hoursPlace of Incident: Tier 1 HallwayInmate Name and Number: HERNANDEZ #71898

REPORT: On the above date and time, Officer Nees commented that RN Nicholson was obviously upset with Dr. Noak. I looked down Tier 1 to see PA Barrett and RN Nicholson standing outside the medical office door and watching Dr. Noak escorting offender Hernandez back to her room. RN Nicholson had her hands on her hips and shaking her head in disbelief. After she turned around, she stated, "I've had enough" and "I quit." I did mention to Officers Nees and Barlow that Hernandez seemed to be moving faster than the last two days since being ill. She did walk slower and collapse the day prior. Awhile later, RN Nicholson reported that she was upset with Dr. Noak. At 2130 hours, offender Hernandez turned in a memo stating what took place in the medical room and how she did not want to see that doctor again. I then notified the Duty Officer, Lt. Presley. Per her request, I filled out a 105 incident form. End of report



Reporting Staff Signature

000769

ACSD0031

IDAHO DEPARTMENT OF CORRECTION
SOUTH BOISE COMMUNITY WORK CENTER

SHIFT REPORT/BRIEFING

DATE 1/30/94

NOT LEGIBLE

OFFICER REPORTING FOR DUTY:

SHIFT #1 BurkeSHIFT #2 T. SullivanSHIFT #3 L. Jackson / NEES / BARLOWCOUNT 120 COUNT CHANGES DURING SHIFT _____

D.O.R.'S TO BE PRESENTED BY ONCOMING SHIFT # _____ YES _____ NO _____

ALL KEYS ACCOUNTED FOR:

C-FILE, MEDICAL FILE CABINETS SECURED SHIFT #1 ☒ SHIFT #2 ☒ SHIFT #3 ☒FAX MACHINE CHECKED SHIFT #1 ☒ SHIFT #2 ☒ SHIFT #3 ☒ONCOMING SHIFTS WILL READ AND INITIAL SHIFT BRIEFING REPORTS FROM
THE LAST TWO DAYS PRIOR TO ASSUMING SHIFT.

INFORMATION TO BE PASSED TO THE ONCOMING SHIFT:

Shift 1: Mr Hernandez returned from hospital - instructions
from medical - if she collapses call 911 then SIC. Medical
will be back for her @ 8:00. Mr Hernandez's
roommates are to escort her in wheel chair to & from bathroom.
Mr Kathy Miller on lay in @ 0630 (95)
Mr. Barlow lay-in at 0630 (95)
Shift 2 - Mr. Barlow at 0840 (95)
J. Jones lay-in at 0850 (95)

SHIFT 3: ATT SECURITY STIFF IF DR NOAK ENTERS THE FACILITY
HE IS TO BE TURNED AWAY AND NOT ALLOWED TO COME
INTO THE CENTER, PER LT PRESLEY.

FORMS SECURITY
BRIEFING FORM
06/1998

F. Jones may be issued 2 (two) cans
of the Soda Pop at each Rec time.
Per Sgt [Signature]

000770
ACSD0032

00122201517

INMATE CONCERN FORM

Inmate Name: <u>Hernandez Norma</u>	Number: <u>71898</u>
Bunk Assignment: <u>13-C</u>	Date: <u>1-29-04</u>
To: _____ (Person most directly responsible for issue/concern)	

Issue/Concern (Briefly explain problem)

The male PR # that seen me today was very forceful abrupt + rude - He grabbed me by my arm after pushing the nurse to the side. With a very strong grip he had on my arm and forced me to walk back to my

Inmate's Signature: _____

Staff Comments and Action Taken:

Date Received:

1/30/04 @ 1930 hrs

2/1/04 - Received information + informed security officer regarding no contact by PR #

Signature/Title: _____

Date Signed and Mailed:

2/1/04

DISTRIBUTION: Both copies should be forwarded. Yellow copy will be returned to you with response.
WHITE - File YELLOW - Inmate

ACSD0033

000771

PR 17256

SOUTH BOISE WOMEN'S CORRECTIONAL CENTER
STAFF INFORMATION REPORT

I.R.

Date of Incident: 01/30/04
Time of Incident: 1515 hours
Place of Incident: Tier 1 Hallway
Inmate Name and Number: HERNANDEZ #71898

REPORT: On the above date and time, Officer Nees commented that RN Nicholson was obviously upset with Dr. Noak. I looked down Tier 1 to see PA Barrett and RN Nicholson standing outside the medical office door and watching Dr. Noak escorting offender Hernandez back to her room. RN Nicholson had her hands on her hips and shaking her head in disbelief. After she turned around, she stated, "I've had enough" and "I quit." I did mention to Officers Nees and Barlow that Hernandez seemed to be moving faster than the last two days since being ill. She did walk slower and collapse the day prior. Awhile later, RN Nicholson reported that she was upset with Dr. Noak. At 2130 hours, offender Hernandez turned in a memo stating what took place in the medical room and how she did not want to see that doctor again. I then notified the Duty Officer, L.L. Presley. Per her request, I filled out a 105 incident form. End of report



Reporting Staff Signature

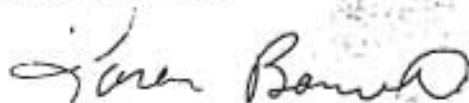
RECEIVED
FEB 04 2004
OPSRECEIVED
FEB 04 2004
L1000772
ACSD0034

2/2/04

Per request of LT. Presley: Information concerning an incident concerning N. Hernandez #71898 on 1/30/04.

Dr. Noak arrived at SBWCC, late in the afternoon, to perform a physical assessment on Hernandez. I observed his initial assessment but went back to my office after CMS Jana Nicholson arrived for further assistance. I came out of my office and saw Jana and Hernandez stopped in the hall. I then saw Dr. Noak come out of the exam room and move Jana aside. He then took the arm of Hernandez and escorted her down the hall to her room.

Karen Barrett MS PA-C



RECEIVED
FEB 04 2004
OPS

000773

ACSD0035

00122201517

CASE STATUS REPORT

☒ ADA COUNTY SHERIFF
☐ BOISE POLICE DEPT. (Division):

1. D.R. No. 17256

2. SPECIFIC CRIME

Battery

3. CASE STATUS

☐ CLEARED BY ARREST
☒ CLEARED BY EXCEPTION
☐ UNFOUNDED
☐ INACTIVE
☐ INFORMATION

3. LOCATION OF OCCURRENCE

13200 Pleasant Valley Road, Boise, Idaho 83634

4. VICTIM

Hernandez, Norma & Nicholson, Janna

5. DATE OF OCCURRENCE

013004

6. DATE OF THIS REPORT

030904

8. CURRENT STATUS

☒ VICTIM☐ WITNESS☐ INFORMANT☒ WAS CONTACTED☐ REFUSES TO TESTIFY☐ CAN NOT IDENTIFY☐ CAN NOT BE CONTACTED☐

9. RECOVERED VEHICLE

☐ OWNER NOTIFIED☐ ATTEMPTED

RECOVERED BY :

VALUE:

DATE:

10. RECOVERED PROPERTY (List Quantity, Type, Brand, Serial Number, Model, Condition, etc.)

11. AMOUNT OF RECOVERY BY TYPE (Nearest Dollar)

A. Currency, Notes, etc.	\$
B. Jewelry, Precious Metals	\$
C. Clothing	\$
D. Locally Stolen Autos	\$
E. Office Equipment	\$
F. Stereos, Cameras, TVs	\$
G. Firearms	\$
H. Household Items	\$
I. Consumable Goods	\$
J. Livestock	\$
K. Miscellaneous	\$
L. TOTAL OF ABOVE	\$

12. PERSONS ARRESTED (Last-First-middle, Additional in Block #19)

13. AGE

14. RACE

15. ARREST DATE

16. DOCKET No.

17. OFFICER SERIAL

18. ADDITIONAL CASES CLEARED (Note if suspects may be suspects in cases being investigated by other agencies)

19. ADDITIONAL INFORMATION (Describe any additional or different modus operandi factors, descriptions of vehicle, tools or property disclosed by further investigation and any changes or reductions in original charge.)

Suspect was Noak, John F. [REDACTED]

Prosecution declined on two counts of Battery.

20. SIGNATURE OF REPORTING OFFICER

D. Lukasik

SERIAL

2594

21. APPROVED BY

Sgt. Larry Roberson

SERIAL

2133

REVISED 6/7/90

000774
ACSD0036

ADA COUNTY SHERIFF
BOISE POLICE
PROPERTY INVOICE

[Handwritten signature]

RD 42	DR No. 17256	Page 1 Of 1
DATE 022304		TIME: 1340
Property Codes	1= Stolen	5= Found
	2= Embezzled	6= Safekeeping
	3= Seized	7= Destruct Only
	4= Evidence	8= Other

☐ INVOICE ONLY ☒ REPORT TO FOLLOW ☐ CITED/NO REPORT

BOOKING OFFICER D. Lukasik	ADA NO. 2594	APPROVED BY	OFFENSE Battery	FELONY/MISD. Misd.
-------------------------------	-----------------	-------------	--------------------	-----------------------

				PROPERTY USE ONLY	
ITEM NO.	DESCRIPTION	SERIAL NO.	DISP.	BAR CODE	
1 DL	Copy of the medical chart of N. Hernandez				
*CODE 4	OWNER'S NAME	LOCATION SEIZED SBWCC			
2 DL	CD containing interviews				
*CODE 4	OWNER'S NAME	LOCATION SEIZED SBWCC/7200 Barrister			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			
ITEM NO.	DESCRIPTION	SERIAL NO.			
*CODE	OWNER'S NAME	LOCATION SEIZED			

CASE #: 2004-00017256
COPY OF MEDICAL CHART #1DL B
LOC/BIN: EVID/ E6C
Date Received: 02/23/2004

0008277

CASE #: 2004-00017256
CD W/ INTERVIEWS #2DL BATTERY
LOC/BIN: EVID/ E6C
Date Received: 02/23/2004

0008278

HOW PROPERTY OBTAINED/DETAILS OF INCIDENT
1 DL-Medical chart obtained from J. Nicholson after N. Hernandez signed a release (release included).
2 DL-Interviews of N. Hernandez, K. Barrett, J. Nicholson, and J. Noak.

WAIVER: The property is not my own and I do not allege any claim upon the property as against the true owner nor do I allege any claim upon the property as against the City of Boise nor County of Ada, Idaho.			SIGNATURE:
PERSON PROPERTY OBTAINED FROM	ADDRESS	PHONE NO.	
Stored at <input checked="" type="checkbox"/> Property Room <input type="checkbox"/> Other			
<input type="checkbox"/> If Pawn Shop, attach pawn ticket copy to this form.			

000775

LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN
Chief, Civil Litigation Division
EMILY A. MAC MASTER, ISB No. 6449
Deputy Attorneys General
Statehouse, Room 210
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 334-2830
emily.macmaster@ag.idaho.gov
Memo -- Haas Msj (Final).Doc

Attorneys for the State Defendants Idaho Department of Correction and Richard D. Haas

NO. _____
A.M. _____ P.M. _____
FILED 453

SEP 03 2009

J. DAVID NAVARRO, Clerk
By E. HOLMES
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR COUNTY OF ADA

JOHN F. NOAK,

Plaintiff,

v.

PRISON HEALTH SERVICES, INC., a
subsidiary of AMERICAN SERVICES
GROUP, INC.; IDAHO DEPARTMENT OF
CORRECTION; RICHARD D. HAAS; and
DOES 1-10.

Defendants.

)
) Case No. CV OC 0623517
)
) **DEFENDANT RICHARD D. HAAS'**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR SUMMARY JUDGMENT**
)

TABLE OF CONTENTS

I.	NATURE OF THE CASE.....	1
II.	FACTUAL BACKGROUND.....	2
	A. The PHS Contract to Provide Health Care Services	2
	B. The January 30, 2004 Incident	2
	C. PHS' Termination of Noak's Employment	6
III.	PROCEDURAL BACKGROUND	7
IV.	STANDARD FOR MOTION FOR SUMMARY JUDGMENT.....	7
V.	ARGUMENT	8
	A. Summary Judgment Should Be Granted on Count III of the Complaint for Defamation <i>Per Se</i> Because the Complaint Is Deficient, as a Matter of Law	8
	B. Summary Judgment Should Be Granted on Count III of the Complaint Because Haas Has Immunity to Noak's Cause of Action for Defamation <i>Per Se</i> Under Statutory, Constitutional and Common Law.....	11
	1. The Medical Practice Act Provides Absolute Immunity for Haas' March 15, 2004 Letter to the Board of Medicine	11
	2. The First Amendment to the United States Constitution Provides Immunity for Haas' March 15, 2004 Letter to the Board of Medicine	12
	3. The Idaho Tort Claims Act Provides Immunity for Haas' March 15, 2004 Letter to the Board of Medicine	15
	4. Haas Cannot be Held Liable for Beauclair's March 9, 2004 Letter.....	17
	5. Noak Cannot Maintain Count III for Defamation <i>Per Se</i> Based Upon Haas' February 5, 2004 Letter to Dull.....	19
	C. Summary Judgment Should Be Granted on Count V of the Complaint for Conversion Because Noak Has No Cognizable Damages and There Is No Triable Issue That Haas Withheld Noak's Property	20
	D. Summary Judgment Should Be Granted on Noak's Emotional Distress Claims in Count II of the Complaint, as a Matter of Law	21

000777

1.	The Intentional Infliction of Emotional Distress Claim Should Be Dismissed Because There Is No Triable Issue of Outrageous Conduct by Haas.....	21
2.	The Negligent Infliction of Emotional Distress Claim Should Be Dismissed Because Haas Owed No Independent Legal Duty to Noak	22
3.	The Negligent Infliction of Emotional Distress Claim Is Barred by the Exclusive Remedy Provisions of the Worker's Compensation Statutes	23
VI.	CONCLUSION	24

TABLE OF AUTHORITIES

Cases

Page No.

United States Supreme Court Cases:

<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)	8
<u>Estelle v. Gamble</u> , 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)	14
<u>McDonald v. Smith</u> , 472 U.S. 479, 105 S. Ct. 2787, 86 L. Ed. 2d 384 (1985)	13
<u>New York Times Co. v. Sullivan</u> , 376, U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)	<i>passim</i>
<u>Philadelphia Newspapers, Inc. v. Hepps</u> , 475 U.S. 767, 106 S. Ct. 1558, 89 L. Ed. 2d 783 (1986)	13

Idaho Cases:

<u>Anderson v. City of Pocatello</u> , 112 Idaho 176, 731 P.2d 171 (1987)	15, 16
<u>Bandelin v. Pietsch</u> , 98 Idaho 337, 563 P.2d 395 (1977)	7
<u>Barlow v. International Harvester Co.</u> , 95 Idaho 881, 522 P.2d 1102 (1974)	18, 20
<u>Carver v. Ketchum</u> , 53 Idaho 595, 26 P.2d 139 (1933)	20
<u>Clark v. The Spokesman-Review</u> , 144 Idaho 427, 163 P.3d 216 (2007)	8, 13, 14
<u>Doe v. Durtschi</u> , 110 Idaho 466, 716 P.2d 1238 (1986)	15, 18
<u>Finholt v. Cresto</u> , 143 Idaho 894, 155 P.3d 695 (2007)	8, 14
<u>Fuhriman v. State of Idaho Dept. of Transp.</u> , 143 Idaho 800, 153 P.3d 480 (2007)	24
<u>Hagy v. State of Idaho</u> , 137 Idaho 618, 51 P.3d 432 (2002)	23
<u>Harrison v. Binnion, M.D.</u> , — Idaho —, — P.3d —, 2009 WL 1929354 (2009)	12
<u>Jones v. EG & G Idaho, Inc.</u> , 109 Idaho 400, 707 P.2d 511 (Ct. App. 1985)	7
<u>Laughton v. Crawford</u> , 68 Idaho 578, 201 P.2d 96 (1948)	13
<u>Peasley Transfer & Storage Co. v. Smith</u> , 132 Idaho 732, 979 P.2d 605 (1999)	21

<u>Sorensen v. Saint Alphonsus Reg. Med. Center, Inc.</u> , 141 Idaho 754, 118 P.3d 86 (2005)	22
<u>State v. Gowin</u> , 97 Idaho 766, 554 P.2d 944 (1976)	15
<u>Steele v. The Spokesman-Review</u> , 138 Idaho 249, 61 P.3d 606 (2002)	21
<u>Thomas v. Medical Center Physicians, P.A.</u> , 138 Idaho 200, 61 P.3d 557 (2002)	22
<u>Van v. Portneuf Medical Center</u> , — Idaho —, 212 P.3d 982 (2009)	8
<u>Vanvooren v. Astin</u> , 141 Idaho 440, 111 P.3d 125 (2005)	7, 10
<u>Wiemer v. Rankin</u> , 117 Idaho 566, 790 P.2d 347 (1990)	8, 14
<u>Wilder v. Redd</u> , 111 Idaho 141, 721 P.2d 1240 (1986)	23
<u>Wimer v. State of Idaho</u> , 122 Idaho 923, 841 P.2d 453 (Ct. App. 1993)	23
<u>Yoakum v. Hartford Fire Ins. Co.</u> , 129 Idaho 171, 923 P.2d 416 (1996)	9

Cases From Other Jurisdictions:

<u>Barker v. Huang</u> , 610 A.2d 1341 (Del. 1992)	22
<u>Hoesl v. United States</u> , 451 F. Supp. 1170 (N.D. Cal. 1978)	18
<u>Jacobson v. Schwarzenegger</u> , 357 F. Supp. 2d 1198 (C.D. Cal. 2004)	9
<u>King v. Idaho Funeral Service Assn</u> , 862 F.2d 744 (9th Cir. 1988)	13
<u>Leidholdt v. L.F.P., Inc.</u> , 860 F.2d 890 (9th Cir. 1988)	22
<u>Samuel v. Michaud</u> , 980 F. Supp. 1381 (D. Idaho 1996)	9
<u>Seaphus v. Lilly</u> , 691 F. Supp. 127 (N.D. Ill. 1988)	9
<u>Taylor v. Forte Hotels Int'l</u> , 1 Cal. Rptr. 2d 189 (Cal. Ct. App. 1991)	20, 23
<u>Thompson v. Public Svc. Co. of Colorado</u> , 800 P.2d 1299 (Colo. 1996)	18

Statutes

Page No.

Idaho Code § 6-702	22
Idaho Code § 6-904	<i>passim</i>
Idaho Code § 6-905	11
Idaho Code § 6-908	11
Idaho Code § 20-209B	14

Idaho Code § 54-1802	11, 16
Idaho Code § 54-1803	12
Idaho Code § 54-1806	11, 16
Idaho Code § 54-1818	11, 12
Idaho Code § 72-102	24
Idaho Code § 72-209	24
Idaho Code § 72-210	24
Idaho Code § 72-211	24

Other Authorities

Page No.

U.S. Const. amend. I	13
I.R.C.P. 56(c)	7
IDAPA 22.01.01.14	11, 16
Restatement of Torts, Second, §§ 558, 570 (1977)	9

I.

NATURE OF THE CASE

According to witnesses, on January 30, 2004, Plaintiff John F. Noak, M.D., pushed a medical staff employee of Defendant Prison Health Services, Inc. ("PHS") out of the way while she was assisting an ill inmate who felt faint, grabbed the arm of the inmate and escorted her in an irritated manner down a long hall to her cell. Both women reported the incident to Defendant Idaho Department of Correction ("the Department") and filed criminal battery charges.

Noak was PHS' Medical Director and was responsible for overseeing the quality of all medical services provided under PHS' contract (the "PHS Contract") to provide medical care at prisons throughout the State of Idaho. After investigating, the Department asked PHS to provide a new medical director. PHS agreed and also decided to terminate Noak's employment.

In this lawsuit, Noak alleges that the Department wrongfully required a new medical director, that PHS wrongfully terminated his employment and that all of the defendants wrongfully withheld his Drug Enforcement Agency ("DEA") certificates, ordering forms and prescription pads. The sole mention of Defendant Richard D. Haas ("Haas") in the Complaint and Demand for Jury Trial, filed December 15, 2006, (the "Complaint") is that Haas sent a letter to the Idaho State Board of Medicine (the "Board of Medicine") afterwards about the incident.

Haas moves for summary judgment on all three counts alleged against him in the Complaint: Counts II (emotional distress claims), III (defamation *per se*) and V (conversion).¹ The Complaint fails to adequately plead defamation *per se* against Haas and, in any event, Haas has immunity on this claim. Noak's conversion claim should be dismissed for the lack of cognizable damages and as there is no triable issue that Haas withheld Noak's property. Noak's claim for intentional infliction of emotional distress fails because there is no triable issue of outrageous conduct by Haas. Noak's claim for negligent infliction of emotional distress is duplicative of Noak's other tort claims and is barred by the workers' compensation statutes.

¹ On April 10, 2008, the Court dismissed Haas from Count I of the Complaint. *See Order, dated April 10, 2008.* As pled in the caption of Count IV of the Complaint, Noak alleges his interference claims only against the Department. *See Complaint, Count IV.*

II.

FACTUAL BACKGROUND

A. The PHS Contract to Provide Health Care Services

From 2001 through 2005, PHS held the PHS Contract to provide medical care to inmates at nearly all Idaho prisons and correctional facilities. Joint Statement of Undisputed Facts, filed herewith (“SOF ¶ ____”), ¶ 1.² Noak was PHS’ Medical Director for Idaho and a physician for three prisons, including the South Boise Women’s Correctional Center (“SBWCC”). *Id.* at ¶¶ 1–6. As Medical Director, PHS charged Noak with monitoring the quality of all medical care under the PHS Contract. Noak reported administratively to Lee Harrington, PHS’ Regional Vice President for Idaho, until Rick Dull replaced Harrington in September 2003. *Id.* at ¶ 3–4.

Tom Beauclair was the Director of the Department. Two Administrators, Don Drum and Pam Sonnen, and Chief Investigator Steve Wolf of the Office of Professional Standards (“OPS”), which handles Department investigations, reported to Beauclair. *Id.* at ¶ 7. In January 2003, the Department hired Haas as the Medical Services Manager. Haas reported to Deputy Administrator Paul Martin, who reported to Drum. *Id.* at ¶ 8. Haas’ primary duties were to monitor the PHS Contract and to serve as the liaison to PHS. *Id.* at ¶¶ 8–11.

Over time, Harrington became concerned about Noak showing up late to prison clinics and client meetings with the Department, as well as Noak’s expressed sentiments that inmates were manipulators, complainers and whiners who did not deserve the care. Dull received complaints about Noak’s brusque bedside manner with patients. Wardens and PHS staff raised concerns to Haas about Noak’s attitude, which the Department passed on to PHS. *Id.* at ¶ 12.

B. The January 30, 2004 Incident

From January 27 through 30, 2004, PHS physician assistant Karen Barrett and PHS certified medical assistant Janna Nicholson made repeated phone calls to Noak seeking

² All facts cited in this brief by reference to the Joint Statement of Undisputed Facts (“SOF ¶ ____”) and supported by the affidavits and exhibits filed herewith or by the Affidavit of Bruce J. Castleton in Support of Defendant Prison Health Services, Inc.’s Motion for Summary Judgment, and exhibits thereto, on file with the Court are incorporated herein by this reference.

assistance with Norma Hernandez, an inmate at SBWCC who had a suspected kidney stone. On January 29, 2004, Hernandez had a fainting episode and had to be transported to the emergency room of a local hospital late that night for assessment and treatment. *Id. at ¶ 13.*

It was not until late afternoon on Friday, January 30, 2004, that Noak arrived at SBWCC to examine Hernandez. Afterwards, Nicholson began helping Hernandez back to her room when Noak allegedly heard someone say, “Are you going to faint?” According to Noak, “as the captain of the boat” he “moved expeditiously to the scene,” inserted himself between Nicholson and Hernandez removing Nicholson’s grip and took hold of Hernandez’ arm and walked her down an 80-foot hall to her room. *Id. at ¶¶ 14–16.* Thrown off balance by Noak, Nicholson, upset, exclaimed, “I quit.” *Id. at ¶ 17.*

After Noak left the facility, Nicholson reported her concerns about the incident to Correctional Officer Todd Jackson, who had also witnessed Noak’s escort of Hernandez. *Id. at ¶ 18.* That evening, Hernandez submitted an Inmate Concern Form in which she refused to be seen by Noak and complained that Noak was “abrupt & rude,” forced her down the hall gripping her arm with “no concern of [her] health or wellbeing,” nearly dragging her on her “tipi-toes,” and threatened to send her to the Pocatello Women’s Correctional Center if she did not “heal quickly.” *Id. at ¶ 19 (Deposition of Todd Jackson [“Jackson Depo.”], Ex. 3 thereto).* Jackson phoned supervisor Lieutenant Christy Presley about Nicholson’s report and Hernandez’ Inmate Concern Form, and Presley issued an order barring Noak from SBWCC. *SOF ¶ 20 (Deposition of Christy Presley [“Presley Depo.”], Ex. 8 thereto).*

On Sunday, February 1, 2004, Presley e-mailed Haas about the incident. She then forwarded a packet to him with Hernandez’ Inmate Concern Form and written reports provided by Jackson, Nicholson and Barrett. *SOF ¶ 21–22 (Jackson Depo., Exs. 1–3 thereto; Deposition of Janna Nicholson [“Nicholson Depo.”], Ex. 1 thereto; Deposition of Karen Barrett, Ex. 1 thereto; Presley Depo., Exs 1 and 4 thereto).* Nicholson’s report, dated February 1, 2004, reported that Noak had pushed her aside, grabbed Hernandez and forced Hernandez to walk down the hall in an “aggressive, irritated escort.” *SOF ¶ 22 (Nicholson Depo., Ex. 1 thereto).*

000784

Upon learning of the incident, Haas discussed it with Martin and Wolf, and the matter was referred up the chain of command with a request for an OPS investigation. *SOF ¶ 24.*

On February 3, 2004, Hernandez asked to file a police report on Noak. On February 5, 2004, the Ada County Sheriff's Department (the "Sheriff") took her complaint and initiated a criminal investigation. *SOF ¶¶ 25, 27 (Deposition of Norma Hernandez, Ex. 1 thereto).*

In a letter to Dull, dated February 5, 2004, Haas, as he was advised to do, notified PHS that the Department intended to conduct an inquiry of the allegations to determine whether there was a violation of the PHS Contract. *SOF ¶ 28 (Deposition of Richard D. Haas ["Haas Depo."], Ex. 11 thereto).* Dull spoke with Noak and other witnesses about the incident, and PHS decided to cooperate with the Sheriff and OPS investigations. *SOF ¶¶ 23, 26 and 29–30.*

On February 11 and 12, 2004, Detective Don Lukasik (for the Sheriff) and Wolf (for the Department) conducted recorded interviews of Hernandez, Barrett and Nicholson, who filed her own criminal battery complaint against Noak. Certified transcripts of these recorded interviews are filed herewith. *Id. at ¶ 31 (Affidavit of Emily Mac Master ["Mac Master Affidavit"], Exs. 11–13 thereto).*³ These witnesses reported information including the following:

- Barrett Interview on February 11, 2004: Barrett informed Lukasik and Wolf that Nicholson had the situation under control and that as Barrett came to assist, she heard something slam then Noak insisting, "She can walk." Barrett reported that Noak inserted himself between Nicholson and Hernandez, grabbed Hernandez by the arm and "briskly" took her back to her room. *SOF ¶ 31 (Mac Master Aff., Ex. 11 thereto [Barrett Interview 3:9–7:7]).*

- Hernandez Interview on February 11, 2004: Hernandez informed Lukasik and Wolf that Noak forcefully removed Nicholson's hand from her arm, grabbed her and took her down the hall on her tippytoes. *SOF ¶ 31 (Mac Master Aff., Ex. 13 [Hernandez Interview 19:17–27:5, 39:22–42:7]).* She also reported that when she heard ringing in her ears, Noak

³ The witness statements and transcripts filed herewith are offered in support of this motion not for the truth of the actual witness statements therein (which Noak disputes) but rather to show the information undisputedly reported to Presley, Lukasik and Wolf in connection with the investigations.

responded that his ears had been ringing for two weeks because of stupid inmates and their complaints. *Id.* (Mac Master Aff., Ex. 13 [Hernandez Interview 27:7–20]; Affidavit of William Fruehling [“Fruehling Affidavit”], Ex. B thereto [IDOC0395, ¶ 17]). Hernandez further reported that Noak threatened to send her to Pocatello (Pocatello Women’s Correctional Center) if she didn’t heal quickly, displayed a lack of care and called the medical staff names implying stupidity. *Id.* (Mac Master Aff., Ex. 13 [Hernandez Interview, 28:16–32:9; 46:17–49:22]).

- Nicholson Interview on February 12, 2004: Nicholson informed Lukasik and Wolf that repeated calls were made for Noak’s assistance with Hernandez. *SOF* ¶ 31 (Mac Master Aff., Ex. 12 [Nicholson Interview 14:5–19:25]). Nicholson reported that when Noak finally showed up at SBWCC on January 30, 2004, he was very irritated and abrupt in the exam room and the patient looked scared and uncomfortable. According to Nicholson, she started to help Hernandez back to her room when she began to tremble, her skin became moist and her color drained. As Nicholson assisted Hernandez to a sitting position, she heard a bang and then Noak shoved Nicholson aside (forcing her to take several steps sideways) and grabbed Hernandez’ right arm. His act was very aggressive and threw Nicholson off balance. Nicholson threw up her hands and said “I quit.” (Mac Master Aff., Ex. 12 [Nicholson Interview 37:13–45:15]). Nicholson further reported additional concerns to Lukasik and Wolf about Noak’s attitude toward inmates, including that Noak had previously commented about a patient, “they don’t pay these people enough for acting lessons,” referred to inmates as dirtbags, called an obese inmate “fat fuck ... fat fuck,” reused instruments without sterilization, threatened to send inmates to Pocatello, was frequently tardy, tested for allergies by exposing the offender to the substance (e.g., peanut butter) and waiting for anaphylactic shock, shoved ammonia inhalants into the noses of offenders and ate their diabetic snacks. *Id.* (Mac Master Aff., Ex. 12 [Nicholson Interview 46:10–50:6, 51:15–54:23, 103:9–106:9, 113:15–124:8]).

The next day, on February 12, 2004, Beauclair barred Noak from the prisons and PHS placed him on leave with pay. *SOF* ¶ 32.

/ / /

On February 13, 2004, Detective Lukasik interviewed Noak. *Id. at* ¶ 33. Detective Lukasik referred the criminal case to the prosecutor with a recommendation that a warrant be issued for Noak's arrest, but the prosecutor declined prosecution. *Id. at* ¶ 34 (*Mac Master Affidavit, Ex. 14 thereto*). Wolf asked Noak for an interview, but Noak refused. *Id.*

C. PHS' Termination of Noak's Employment

With the criminal case concluded, the Department decided to take action under the PHS Contract. In a letter from Beauclair to Dull, dated March 9, 2004, Beauclair directed PHS to replace Noak as the Medical Director under the PHS Contract. *SOF* ¶ 35 (*Affidavit of Thomas J. Beauclair ["Beauclair Affidavit"], Ex. A thereto*). Haas was asked to initiate a first draft of Beauclair's letter by compiling information provided to him and including language from the PHS Contract. *SOF* ¶ 36. Haas then forwarded this draft to his supervisor and up the chain of command for review. *Id.* According to Dull, Haas told him to expect the letter via fax. *Id.*

On March 10, 2004, PHS decided to provide a new medical director for the PHS Contract and also decided to terminate Noak's employment. *Id. at* ¶¶ 37–40 (*Deposition of Richard Dull ["Dull Depo."], Ex. 23 thereto*). Dull offered to Noak that he could apply for a position with PHS in another state, but he did not want to leave Idaho. *SOF* ¶ 38. Thereafter, PHS hired a new medical director who remained through the end of the PHS Contract. *Id. at* ¶ 40.

On March 15, 2004, Haas, as directed, sent a letter to the Board of Medicine to inform them of the allegations against Noak. *Id. at* ¶ 41 (*Haas Depo., Ex. 20 thereto*). The Board of Medicine investigated and closed the matter without formal disciplinary action. *SOF* ¶ 42 (*Deposition of John F. Noak, M.D. ["Noak Depo."], Ex. 33 thereto*).

Noak claims that after his termination, the defendants withheld his DEA certificates, form 222s and prescription pads from him. *Complaint, ¶¶ 41, 61–64; SOF ¶¶ 44–56*. However, there is no evidence that Noak ever made a demand to Haas for the return of these items. *Id.*

After additional interviews were conducted, the OPS investigation was completed. *SOF* ¶ 43 (*Fruehling Affidavit, Exs. A and B thereto*). The investigation report summarized the witness interviews, including Lukasik's February 13, 2004, interview of Noak. *Id.*

III.

PROCEDURAL BACKGROUND

Noak brought this action on December 15, 2006, after initially commencing and then dismissing this lawsuit in federal court. *See Memorandum Decision and Order, entered on April 11, 2007, pp. 2–3.* On January 9, 2007, the Department and Haas filed a motion to dismiss. *Id. at p. 3.* Noak countered by filing a motion for leave to amend his Complaint on February 21, 2007, asking permission to add Beauclair and Wolf as defendants and to allege malice in Count III (for defamation *per se*). *Id. at p. 3.* The Court denied both motions, except to allow Noak to amend his Complaint to allege malice. *Id. at pp. 6, 10.* On April 25, 2007, the Department and Haas filed a motion for reconsideration or, in the alternative, clarification of the Court’s Order, which the Court granted in part and denied in part. *See Order, issued on April 10, 2008.* As Noak never filed an amended complaint, the Department and Haas answered the initial Complaint on April 21, 2008. *See Defendants Idaho Department of Correction and Richard D. Haas’ Answer to Plaintiff’s Complaint and Demand for Jury Trial, filed April 21, 2008.*

IV.

STANDARD FOR MOTION FOR SUMMARY JUDGMENT

Summary judgment should be granted where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). Where the only reasonable inference from the undisputed facts is unfavorable to the party opposing the motion, summary judgment is granted. *See Jones v. EG & G Idaho, Inc.*, 109 Idaho 400, 401, 707 P.2d 511, 512 (Ct. App. 1985). Thus, useless trials are avoided where there are no genuine issues of material fact and a party is entitled to judgment as a matter of law. *See Bandelin v. Pietsch*, 98 Idaho 337, 340, 563 P.2d 395, 398 (1977). The only issues considered on summary judgment are those raised in the allegations of the complaint. *Vanvooren v. Astin*, 141 Idaho 440, 443, 111 P.3d 125, 128 (2005).

To create a genuine issue of material fact, the dispute must be over facts that might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). The party opposing the motion must present more than conclusory assertions or speculation that an issue of fact exists. Finholt v. Cresto, 143 Idaho 894, 896–97, 155 P.3d 695, 697–98 (2007). A mere scintilla of evidence or only slight doubt as to facts is also insufficient; rather, the non-moving party must present specific facts showing there is a genuine issue for trial. Van v. Portneuf Medical Center, — Idaho —, 212 P.3d 982, 986 (2009). A plaintiff who bears the burden at trial to prove actual malice on a defamation claim must also show actual malice clearly and convincingly at summary judgment. Wiemer v. Rankin, 117 Idaho 566, 574–75, 790 P.2d 347, 355–56 (1990). If the plaintiff's evidence is insufficient for a reasonable jury to find actual malice by clear and convincing evidence, summary judgment is granted. See Clark v. The Spokesman-Review, 144 Idaho 427, 432, 163 P.3d 216, 221 (2007).

V.

ARGUMENT

Haas did not make the Department's decision to request a new medical director or PHS' decision to terminate Noak's employment. *SOF* ¶ 36. The gravamen of Noak's claims against Haas arise out of his correspondence. However, as the Complaint fails to properly plead defamation *per se*, Count III should be dismissed as a matter of law. Regardless, Haas is also immune to Count III for defamation *per se* pursuant to statutory law (under the Idaho Medical Practice Act and the Idaho Tort Claims Act), constitutional law (under the First Amendment to the United States Constitution) and common law (under the common interest privilege).

A. **Summary Judgment Should Be Granted on Count III of the Complaint for Defamation *Per Se* Because the Complaint Is Deficient, as a Matter of Law**

The elements for defamation *per se* are: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting to at least negligence on the part of the publisher (here, actual malice is required); and (4) actionability of

the statement irrespective of special harm. *See* Restatement of Torts, Second, §§ 558, 570 (1977); Yoakum v. Hartford Fire Ins. Co., 129 Idaho 171, 180, 923 P.2d 416, 428 (1996). The statement must impute to the plaintiff a criminal offense, a loathsome disease, a matter incompatible with his trade, business, profession or office, or serious sexual misconduct. *Id.*

The threshold element is a false and defamatory statement, which must be identified in the plaintiff's complaint. In Samuel v. Michaud, 980 F. Supp. 1381, 1399–1400 (D. Idaho 1996), the United States District Court for the District of Idaho dismissed the plaintiffs' defamation claims arising under Idaho law where the complaint alleged the defendants made "fabricated and fraudulent representations" but failed to identify the alleged defamatory statements. *See also* Jacobson v. Schwarzenegger, 357 F. Supp. 2d 1198, 1216 (C.D. Cal. 2004) (requiring a plaintiff to "identify and state the substance of the allegedly defamatory statement"); Seaphus v. Lilly, 691 F. Supp. 127, 134 (N.D. Ill. 1988) ("a defamation plaintiff fails to satisfy the requirements of notice pleading unless he specifically states the words alleged to be actionable.").

Like the plaintiffs' complaint in Samuel, Noak's Complaint does not adequately plead a claim for defamation *per se*. Count III for defamation *per se* vaguely asserts false allegations of criminal and unprofessional conduct but fails to identify any defamatory *per se* statement. *Complaint*, ¶¶ 51–52. The only mention of Haas in the Complaint is in paragraph 40, which alleges: "On March 15, 2004, with the knowledge that Noak had been cleared of any criminal charges stemming from the incident at IDOC [the Department], David Haas ('Haas') an IDOC employee, sent a letter to the Idaho State Board of Medicine informing them of Hernandez's allegations and requesting that the Board investigate Dr. Noak." Paragraph 40 does not identify any false and defamatory *per se* statement in Haas' letter.

Similarly, paragraph 36 of the Complaint alleges that the Department sent a memo to PHS requesting Noak's replacement, and paragraph 37 alleges that PHS terminated Noak's employment due to "spurious allegations" by Department and PHS employees. However, neither paragraph identifies any alleged false and defamatory *per se* statement in Beauclair's

000790

letter of March 9, 2004, much less any such statement by Haas in that letter.

Noak testified at deposition to his contentions that the following statements defamed him:

1. Noak alleged that Haas' letter to the Board of Medicine, dated March 15, 2004, falsely stated: "Information obtained during the investigation prompted the Department to direct PHS to obtain an immediate replacement for Dr. Noak." *SOF* ¶ 41 (*Noak Depo.*, 468:7–471:23; *Haas Depo.*, *Ex. 20 thereto*). Noak asserted that the closed criminal investigation could not have prompted the Department to direct PHS to replace him. *Id.*

2. Noak alleged that Beauclair's letter to Dull, dated March 9, 2004, falsely stated that the Department had completed its investigation and that Noak posed a risk and unacceptable threat to the security of the institution, whose actions were disruptive to a specific institution. *SOF* ¶ 35 (*Noak Depo.*, 506:14–509:7; *Beauclair Affidavit*, *Ex. A thereto*). (Haas assisted with the initial draft of this letter, which he then forwarded up the chain of command for review.)

3. Noak alleged that Haas' letter to Dull, dated February 5, 2004, falsely stated: "Concerns regarding Dr. Noak's attitude and behavior expressed on numerous occasions by the Department managers to you and Mr. Harrington appear to have been ignored, as the problem has grown seemingly more pronounced." *SOF* ¶ 28 (*Deposition of John F. Noak* [*"Noak Depo."*], 466:10–468:6); *Haas Depo.*, *Ex. 11 thereto*). Noak asserted that this statement is false because there is no written documentation that PHS counseled him. *Id.*

In Vanvooren v. Astin, the Idaho Supreme Court held that a plaintiff cannot withstand summary judgment on a factual theory asserted at deposition that is not in the allegations of the complaint. 141 Idaho at 443–44, 111 P.3d at 128–29. As there is no mention in the Complaint of Haas' February 5, 2004 letter to Dull, under Vanvooren Noak cannot withstand summary judgment based on this letter. As discussed above, the Complaint also fails to identify any defamatory *per se* statement by Haas in the March 15, 2004 letter to the Board of Medicine or in Beauclair's March 9, 2004 letter to Dull. Thus, Noak's deposition testimony does not salvage his deficient Complaint, and summary judgment should be granted on Count III to Haas.

Alternatively, any tort claim based upon the February 5, 2004, letter is further barred as a matter of law for lack of a timely notice of tort claim. Tort claims against state employees must be “filed with the Secretary of State within one hundred eighty (180) days from the date the claim arose or reasonably should have been discovered.” See Idaho Code § 6-905. “No claim or action shall be allowed against a governmental entity or its employee unless the claim has been presented and filed within the time limits prescribed by this act.” Idaho Code § 6-908. As Noak filed his notice of tort claim on September 7, 2004, the 180-day period ran from March 7 through September 7, 2004. See *Affidavit of Miren E. Artiach*, ¶ 4, Ex. A thereto, filed January 9, 2007. Ms. Artiach’s affidavit, filed in support of the Department and Haas’ prior motion to dismiss, is incorporated herein by this reference. Thus, Idaho Code § 6-908 bars this tort claim.

As the Complaint fails to plead a cognizable claim of defamation *per se* against Haas, summary judgment should be granted to him on Count III. Alternatively, as discussed below, statutory, constitutional and common law immunities bar this defamation claim against Haas.

B. Summary Judgment Should Be Granted on Count III of the Complaint Because Haas Has Immunity to Noak’s Cause of Action for Defamation *Per Se* Under Statutory, Constitutional and Common Law

1. The Medical Practice Act Provides Absolute Immunity for Haas’ March 15, 2004 Letter to the Board of Medicine

The Medical Practice Act, title 54, chapter 18, Idaho Code, mandates that to assure the public safety, health and welfare, the Board of Medicine shall receive, investigate and prosecute complaints of physician misconduct. See Idaho Code §§ 54-1802, 54-1806 and 54-1814, IDAPA 22.01.01.14. Reflecting this mandate, Idaho Code § 54-1818 not only requires physicians to report misconduct but also provides immunity from civil liability to anyone providing information under the Medical Practice Act:

54-1818. Reporting of violations by physicians. — A licensed physician and surgeon possessing knowledge of a violation of section 54-1814, Idaho Code, by any other physician and surgeon licensed to practice medicine in Idaho shall with reasonable promptness report such knowledge to the board of medicine or its duly authorized committee, agency or representative, and failure to do so shall subject such person to

disciplinary action by the state board of medicine as in its discretion the board shall deem proper, pursuant to procedures provided in chapter 18, title 54, Idaho Code; provided, no person shall be civilly liable for communications, reports or acts of any kind made, given or handled under the provisions of this act

Idaho Code § 54-1818 (emphasis added).

“The word ‘person’ . . . means a natural person.” Idaho Code § 54-1803(7) (emphasis added). The legislature’s use of the term “person” rather than “surgeon” and/or “physician” in the immunity clause of Idaho Code § 54-1818 is thus significant. The statute not only requires licensed physicians and surgeons to report physician misconduct, the statute also guarantees immunity to all natural persons who communicate or report suspected physician misconduct. The reason for this immunity clause is obvious—to encourage the free exchange of information to the Board of Medicine for the regulation of licensed physicians. In the recent case of Harrison v. Binnion, M.D., — Idaho —, — P.3d —, 2009 WL 1929354 (2009) (not yet released for publication), the Idaho Supreme Court recognized that the statutory immunity provided for physician peer review is to encourage the free exchange of information: “A person who provides such information or opinions need not fear a subsequent lawsuit alleging claims such as slander, defamation, tortious interference with contract or prospective economic advantage, or intentional infliction of emotional distress.” *Id.* at *4. The Court’s reasoning applies equally here. As a matter of law, Idaho Code § 54-1818 provides immunity to Haas on all claims arising out of the Board of Medicine letter. *SOF ¶ 41 (Haas Depo., Ex. 20 thereto).*⁴

2. The First Amendment to the United States Constitution Provides Immunity for Haas’ March 15, 2004 Letter to the Board of Medicine

The First Amendment to the United States Constitution recognizes the right to petition the government: “Congress shall make no law . . . abridging . . . the right of the people

⁴ In their answer, Haas and the Department allege absolute and qualified immunity in the Seventh Affirmative Defense. *See Defendants Idaho Department of Correction and Richard D. Haas’ Answer to Plaintiff’s Complaint And Demand For Jury Trial, filed April 21, 2008.* Haas further notified Noak of the application of Idaho Code § 54-1818 in correspondence between counsel, dated May 12, 2009. However, if this notice of the absolute immunity provided to Haas pursuant to Idaho Code § 54-1818 is somehow insufficient, Haas moves for permission to file an amended answer.

peaceably . . . to petition the Government for a redress of grievances.” U.S. Const. amend. I. In McDonald v. Smith, 472 U.S. 479, 105 S. Ct. 2787, 86 L. Ed. 2d 384 (1985), the United States Supreme Court held that the First Amendment bars a claim for defamation in a petition to the government unless the plaintiff shows that false words were spoken about him with actual malice as defined in New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). McDonald at 485–85. “The right to petition is cut from the same cloth as the other guarantees of that Amendment, and is an assurance of a particular freedom of expression.” *Id.* at 472. Haas’ March 15, 2004 letter to the Board of Medicine, the state agency charged with regulating physicians in Idaho, is a petition to state government protected by the petition clause of the First Amendment. *See King v. Idaho Funeral Service Assn*, 862 F.2d 744, 745 (9th Cir. 1988) (holding that a complaint to Idaho licensing officials was constitutionally protected).

Thus, the burden of proof shifts to Noak at trial and at summary judgment to show that the March 15, 2004 letter made a false statement about him *and* that Haas made the false statement with actual malice. *See Clark*, 144 Idaho at 430, 163 P.3d at 219 (holding that the plaintiff must show falsity and actual malice at summary judgment where the type of speech is constitutionally protected). The burden to show falsity is not easily met. Even where the defendant bears the burden of proving truth, there is no liability for defamation if “the substance or gist of the slanderous or libelous statement is true.” Laughton v. Crawford, 68 Idaho 578, 581–82, 201 P.2d 96, 98 (1948). Where the burden of proof to show falsity shifts, the plaintiff will fail to meet his burden if the speech is either true or unknowably true or false because the evidence is ambiguous. Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767, 776–77, 106 S. Ct. 1558, 1563–64, 89 L. Ed. 2d 783 (1986). Thus, “there will be some cases in which plaintiffs cannot meet their burden despite the fact that the speech is in fact false.” *Id.* at 776.

Noak contends that Haas’ letter to the Board of Medicine falsely states, “Information obtained during the investigation prompted the Department to direct PHS to obtain an immediate replacement for Dr. Noak.” Noak speculates that the closed criminal investigation could not have prompted the Department to direct PHS to replace him. *SOF* ¶ 41 (*Haas Depo.*,

000794

Ex. 20 thereto). However, Noak's speculation is not evidence that can withstand summary judgment. See Finholt, 143 Idaho at 897, 155 P.3d at 698 (holding that a plaintiff's speculation does not create a triable issue of fact). Despite Noak's contention, the preceding paragraph in the letter identifies the "investigation" as the Department's investigation. *Id.* Additionally, regardless of a sole prosecutor's decision, the Department was guided by statutory and constitutional standards specific to prison operations. The Director's primary duty pursuant to Idaho Code § 20-209B is to prevent, control and suppress riots, escapes, affrays and insurrections, and attempts, at state prisons. Medical care in prisons is also subject to the constitutional standards of the Eighth Amendment to the United States Constitution. See Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251 (1976) (prohibiting deliberate indifference to the serious medical needs of prisoners). Thus, there is no genuine issue of falsity.

Even if Noak could somehow meet the threshold for showing falsity (which he cannot), he further bears the burden to show clearly and convincingly at summary judgment that Haas made the alleged defamatory *per se* statement with actual malice. See Wiemer, 117 Idaho at 574-75, 790 P.2d at 355-56 (requiring actual malice to be shown at summary judgment by clear and convincing evidence). Actual malice under the New York Times standard does not exist unless the defendant *purposefully avoided* the truth by knowledge of falsity or reckless disregard of the truth; under this constitutional test, actual malice is not "an evil intent or a motive arising from spite." Clark, 144 Idaho at 431, 163 P.3d at 220. Actual malice is a subjective standard; thus, the defendant's state of mind is relevant. *Id.* To show reckless disregard, a plaintiff must show clearly and convincingly that the defendant "in fact entertained serious doubts as to the truth of his publication" or "had a high degree of awareness of the probable falsity of the statements." Wiemer, 117 Idaho at 576, 790 P.2d at 357. Whether the record shows actual malice by clear and convincing evidence is a question of law. *Id.* at 575.

There is no clear and convincing evidence that Haas sent this letter knowing or acting with reckless disregard that it contained a false and defamatory *per se* statement. Instead, at the time, Haas' knowledge of the incident came from information provided by Presley and

Wolf indicating that multiple witnesses perceived Noak's conduct as physically aggressive and threatening. *SOF* ¶¶ 21–22, 31. Even if witnesses lied to Presley and Wolf, as Noak apparently contends, this would be immaterial to the genuine issue of what Haas knew at the time. Additionally, Haas did not act with reckless disregard in relying upon information provided by the Department managers who spoke with witnesses. Thus, Haas is entitled to summary judgment on this claim based upon constitutional immunity under the First Amendment.

3. The Idaho Tort Claims Act Provides Immunity for Haas' March 15, 2004 Letter to the Board of Medicine

The Idaho Tort Claims Act, title 6, chapter 9, Idaho Code provides immunity to state employees acting within the course and scope of employment and without criminal intent or malice against tort claims including libel and slander. Idaho Code § 6-904(3) provides:

6-904. Exceptions to Governmental Liability. A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent shall not be liable for any claim which:

3. Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

Idaho Code § 6-904(3) (emphasis added). Noak's Complaint alleges that Haas acted in the course and scope of his employment. *See Complaint*, ¶ 11. And, the record is insufficient to create a triable issue that Haas defamed Noak with (1) criminal intent or (2) malice.

"The 'criminal intent' provision 'is satisfied if it is shown that the defendant knowingly performed the proscribed acts'" *Doe v. Durtschi*, 110 Idaho 466, 470–71, 716 P.2d 1238, 1242–43 (1986) (holding that teacher who admitted to lewd and lascivious acts with children acted with "criminal intent" under the Tort Claims Act), quoting *State v. Gowin*, 97 Idaho 766, 767–68, 554 P.2d 944, 945–46 (1976). "In every crime or public offense there must exist a union, or joint operation, of act and intent" *Gowin*, 97 Idaho at 768, 554 P.2d at 946 (quoting Idaho Code § 18-114). Also, if there was legal justification or excuse for the statement, statutory immunity applies. *See Anderson v. City of Pocatello*, 112 Idaho 176, 182, 731 P.2d

171, 187 (1987). Thus, to show “criminal intent,” Noak must show that Haas knowingly performed the proscribed act – libel or slander – without legal justification or excuse.

The uncontested facts are insufficient to show that Haas knowingly committed libel in the letter to the Board of Medicine by referencing the Department’s reasons for requiring a new medical director. Regardless, Haas’ letter was also a justified, excused and lawful report to the Board of Medicine under the Medical Practice Act. *See* Idaho Code §§ 54-1802, 54-1806 and 54-1814, IDAPA 22.01.01.14. There is no triable issue that Haas acted with criminal intent.

Alternatively, to show “malice” under Idaho Code § 6-904(3), Noak must show “actual malice,” which is different than malice under the New York Times Standard discussed above. For purposes of Idaho Code § 6-904(3), “actual malice” means the intentional commission of a wrongful or unlawful act, without legal justification or excuse, and with ill will, whether or not injury was intended. Anderson, 112 Idaho at 182–83, 731 P.2d at 187–88. Count III for defamation *per se* does not even allege that Haas acted with malice, despite the Court’s Memorandum Decision and Order, issued on April 11, 2007, allowing Noak to amend his Complaint to allege malice. As a matter of law, Haas should be dismissed from Count III under Idaho Code § 6-904(3) because the operative Complaint does not allege malice.

The evidence is also insufficient to create a triable issue of ill will. Noak testified in his deposition as follows:

Q. Do you have any evidence that Dave Haas was out to get you personally?

A. No.

Q. Do you have any evidence that Dave Haas bore bad feelings towards you or ill will?

(Objection to form by Plaintiff’s counsel.)

A. I have no idea.

SOF ¶ 9 (*Noak Depo.* 562:9–15). Rather, Haas’ and Noak’s business relationship was both professional and friendly. *Id.* (*Haas Depo.*, 47:21–48:8). Despite his admission, Noak

000797

apparently claims instead that he was competing with Haas for the position of “top dog” due to an alleged scheme to bring health care services in-house at the Department. Noak asserts that Haas “ranted” a bit about Noak calling himself the state’s medical director and that Haas approved the transfer of an inmate between prisons without Noak’s permission, rejected Noak’s offer to re-write a Department policy and communicated directly with PHS staff. *SOF* ¶ 11.

However, these allegations are insufficient to show hatred, hostility, spite or other evidence of ill will. The uncontested facts also do not support Noak’s theory that Haas was allegedly motivated to get rid of contracted services. Instead, Haas acted at Beauclair’s direction to initiate a feasibility study. *Id.* at ¶ 10. There is also no causal connection to establish Noak’s “top dog” theory. The Department dropped the feasibility study in early 2003—a year before Haas sent the March 15, 2004, letter to the Board of Medicine. In fact, Haas was relieved by the Department’s decision, and his job was easier when PHS had a Medical Director in place. *Id.* at ¶¶ 10–11 (*Haas Affidavit*, ¶ 4). Also, contrary to Noak’s speculation that he was somehow targeted in an alleged scheme to bring medical services in-house, PHS replaced Noak with a new Medical Director who remained in place through the end of the contract in 2005. *Id.* at ¶ 40.

Haas’ conduct was also in accordance with his role as contract monitor. Haas corrected Noak for referring to himself as the state’s medical director because that claim could mislead prison staff into thinking that Noak had operational authority over the wardens that he did not have. *Id.* at ¶ 11. The transfer of felons between prisons is a custody decision that the Department (and not any contractor) must make. *Id.* Finally, the Department is in charge of, and is not required to have subcontractors write, its policies. In any event, Haas’ letter to the Board of Medicine was also justified, excused and entirely lawful under the Medical Practice Act. Thus, there is no triable issue of malice, and summary judgment should be awarded to Haas.

4. Haas Cannot be Held Liable for Beauclair’s March 9, 2004 Letter

Noak cannot maintain a defamation claim against Haas for merely assisting Beauclair with an initial draft of his letter or faxing the letter to Dull. Otherwise, secretaries,

clerks and other employees who routinely compose drafts of letters for their bosses to finalize and sign, or who press “send” on the fax machine, would be subject to tort lawsuits.

Alternatively, Idaho Code § 6-904(3) provides immunity to Haas for assisting Beauclair with the first draft of Beauclair’s letter of March 9, 2004 to Dull. *SOF* ¶¶ 35–36 (*Beauclair Affidavit, Ex. A thereto*). Haas acted within the course and scope of his employment. There is no triable issue that Haas acted with criminal intent—i.e., by knowingly committing libel or slander; Haas did not even sign the letter. *See Durtschi*, 110 Idaho at 470–71, 716 P.2d at 1242–43. Instead, he merely compiled information provided to him and from the PHS Contract, then forwarded the draft up the chain of command. *SOF* ¶ 36. As discussed above, there is no triable issue that Haas bore actual malice towards Noak. Noak should not be allowed to bootstrap a defamation claim against Haas based upon Beauclair’s letter.

The common interest privilege also protects Haas’ assistance to Beauclair. In *Barlow v. International Harvester Co.*, the Idaho Supreme Court recognized the common interest privilege as a qualified privilege protecting the publisher of defamatory material from liability where the publication is made to one who shares a common interest, such as a business relationship. 95 Idaho 881, 891–92, 522 P.2d 1102, 1112–113 (1974). Whether the privilege applies is a question of law for the court. *Id.* at 892, 511 P.2d at 1113. The common interest privilege is lost if there is express malice (malice in fact), defined as “the publication of defamatory matter in bad faith, without belief in the truth of the matter published, or with reckless disregard of the truth or falsity of the matter.” *Id.* The plaintiff bears the burden of proving malice. *Thompson v. Public Svc. Co. of Colorado*, 800 P.2d 1299, 1306 (Colo. 1996). Showing mere negligence is not enough. *Hoesl v. United States*, 451 F. Supp. 1170, 1180 (N.D. Cal. 1978). Although malice is generally a jury question, the court decides the issue if the lack of evidence of malice admits only one conclusion. *Barlow*, 95 Idaho at 892, 522 P.2d at 1113.

Beauclair shared a common interest with Haas in the letter, as Haas prepared the first draft for Beauclair’s benefit. *SOF* ¶ 36. Thus, the common interest privilege applies, and there is no triable issue that the privilege was lost. In his deposition, Noak alleged that

000799

Beauclair's letter of March 9, 2004, falsely stated: ". . . Dr. Noak demonstrated a pattern of unprofessional conduct which violated the standards, contributed to a hostile environment for staff and offenders, and disrupted the orderly operation of the Department facilities." *Id.* at ¶ 35 (*Beauclair Affidavit, Ex. A thereto*). However, there is no triable issue that this sentence was Haas' words or, alternatively, that Haas made this statement knowing it was false or with reckless disregard of the truth. Indeed, Noak ignores the first part of the sentence which states, "Our investigation has revealed" *Id.* This omitted clause is significant because the entire sentence communicates what the investigation revealed, regardless of after-the-fact challenges to the truth of witness' statements. Haas' knowledge of the events came from information provided by Presley and Wolf indicating multiple witness reports of unprofessional conduct by Noak. *Id.* at ¶¶ 21–22, 31. Thus, the common interest privilege bars this defamation claim.⁵

5. Noak Cannot Maintain Count III for Defamation *Per Se* Based Upon Haas' February 5, 2004 Letter to Dull

Immunity under the Tort Claims Act, at Idaho Code § 6-904(3), defeats Noak's claims based upon Haas' February 5, 2004 letter to Dull. *Id.* at ¶ 28 (*Haas Depo., Ex. 11 thereto*). Haas sent this letter as liaison to PHS, within the course and scope of his employment. There is no triable issue that Haas knowingly libeled or slandered Noak with criminal intent in this letter. Moreover, as discussed above, there is no triable issue that Haas sent this letter with hatred, hostility, spite or other evidence of ill will toward Noak. Instead, the letter was sent to inform PHS of the allegations and the Department's intent to investigate—a justified, excused and lawful act. *Id.* Thus, the Idaho Code § 6-904(3) provides Haas immunity against this claim.

The common interest privilege further protects Haas' letter to Dull. Haas' letter to Dull was a privileged communication arising out of their common interest in the subject of patient care and the parties' contractual obligations under the PHS Contract. There is no evidence that that the common interest privilege was lost due to malice. Noak contends that this

⁵ The common interest privilege also protects Haas' March 15, 2004, letter to the Board of Medicine, which shares a common interest in physician conduct towards inmate patients. For the reasons discussed above, there is no triable issue that Haas sent this letter with express malice.